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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
AZ CORP COMMISSION  
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IN THE MATTER OF QWEST )  
CORPORATION'S COMPLIANCE )  
WITH SECTION 252(e) OF THE )  
TELECOMMUNICATIONS ACT )  
OF 1996 )

Docket No. RT-00000F-02-0271

**QWEST CORPORATION'S COMMENTS IN RESPONSE TO SUPPLEMENTAL  
STAFF REPORT AND RECOMMENDATION**

[REDACTED VERSION]

August 29, 2002

Qwest Corporation (“Qwest”) respectfully submits these comments in response to the Supplemental Staff Report and Recommendation. In short, Staff’s report proposed a standard for determining which agreements are subject to the filing requirements of the Telecommunications Act of 1996 (the “1996 Act”) and applies that standard to conclude that certain agreements between Qwest and CLECs should have been filed with the Arizona Commission. Staff also addresses whether Qwest acted improperly by entering into settlement agreements with certain CLECs that also included covenants in which the CLEC agreed to withdraw or not participate in Qwest’s merger or Section 271 proceedings. Finally, Staff makes recommendations with regard to the scope of any further proceedings on the subject of Qwest’s compliance with Section 252(e) of the 1996 Act.

Qwest hereby submits its Comments in Response to the recommendations of Staff. First, the standard articulated by Staff for the filing obligations of ILECs and CLECs brings into its scope matters that Congress intended would be negotiated between those parties without regulatory oversight. Second, many of the specific agreements identified by Staff as meeting the filing standard under Section 252(e) – including settlements of historical disputes, agreements to file an interconnection amendment, and form documents – are beyond the letter and intent of the 1996 Act. Third, no additional penalties should be imposed on Qwest. As all parties acknowledge, there was no standard for determining what types of voluntarily negotiated agreements had to be filed at the time of the agreements identified by Staff, and Qwest and the CLECs (as set forth in their discovery responses) attempted in good faith to comply with Section 252(e)’s imprecise language. Particularly telling is that the CLECs who were parties to these agreements also did not believe that such agreements were interconnection agreements within the filing requirements of Section 252(a). Further, while the Commission may wish to promulgate a

filing standard for future agreements, Qwest should not be subject to fines or penalties for transactions that occurred before a clear standard was established.

Further, issues with respect to the scope of Qwest's 252(e) obligations are separate and distinct from the issue before the Commission in the 271 docket: Has Qwest opened its network to its competitors? It is, therefore, inappropriate to consolidate the pending 271 docket with this 252(e) proceeding. No matter what course the Commission chooses to deal with the issues such as whether there have been violations of 252(e) or whether fines are appropriate for a failure to file an agreement or for including a non-participation clause in an agreement, the 271 proceeding should be permitted to move to completion as soon as possible.

**I. THE SCOPE OF SECTION 252(E) FILING OBLIGATIONS**

**A. The Purpose of the 1996 Act Is to Permit Market Forces to Play a Larger Role in ILEC and CLEC Interactions.**

Any standard defining the scope of Section 252(a)(1) must be cognizant of Congress' goal of establishing competition in the local exchange market by fostering privately negotiated agreements,<sup>1/</sup> while also respecting the role for regulators to review and approve the most important CLEC-ILEC contract matters. The 1996 Act represents a move away from the pre-existing model of interactions among carriers, in which all transactions are overseen by and, to a great extent, formulated and implemented by regulators, toward a model that includes regulatory oversight over some types of contracts but not all.

The requirement to file an "interconnection agreement" between an ILEC and a CLEC for state commission approval arises from Section 252(a) of the Telecommunications Act. Qwest suggests that the touchstone of Congressional intent to define agreements that must be filed is Section 252(a)(1)'s express reference to "a detailed schedule of itemized charges for

interconnection and each service or network element included in the agreement.” Section 252(a) can most logically be read to mean that the mandatory 90-day prior approval process should apply to -- and delay implementation of -- only the most significant aspects of a voluntary agreement: the rates and associated service descriptions for interconnection, services and network elements. Conversely, the mandatory approval process should not apply to other ILEC-CLEC contractual arrangements going beyond this “schedule,” such as account team support, mechanics of provisioning and billing for ordered interconnection services or UNEs, or dispute resolution. Qwest suggests that the statutory language indicates that a negotiated arrangement should be filed for prior state commission approval insofar as it includes:

- (i) a description of the service or network element being offered, with a focus on the functionality to be received by the interconnecting carrier;
- (ii) the various options available to the requesting carrier (*e.g.*, the capacities of loops or transport trunks that are available);
- (iii) the rate structures and rate levels associated with each such option, including all applicable recurring and non-recurring charges, as well as any necessary prerequisites for eligibility for a certain set of rates; and
- (iv) the term of the agreement and the expiration date.

The scope of interconnection agreements under Sections 251 and 252 extends to only services that an ILEC must provide under Sections 251(b) and (c). That is, Section 252(a)(1) requires the filing of agreements that an ILEC and a CLEC have negotiated pursuant to Section 251, and Section 251(c)(1) places the duty upon an ILEC to negotiate agreements to fulfill the duties under Sections 251(b) and (c).

Furthermore, sound policy supports this interpretation of the 1996 Act, which is grounded both in Congress's intent and the structure of the 1996 Act. Miscategorizing exempt contracts as

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<sup>1/</sup> Telecommunications Act of 1996, Joint Managers Statement, S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess. 1 (1996).

interconnection agreements subject to the Section 252 filing and approval procedures is contrary to the public interest and the 1996 Act, for a number of reasons. First, it imposes administrative burdens and delays on the parties, who need to file such contracts and wait to put them into effect until receiving approval, and on state commissions that are induced to review these contracts. Second, such miscategorization undermines the incentives for ILECs to negotiate and rapidly settle issues in dispute with other carriers, contrary to the intent of the 1996 Act. Third, it threatens to upset the settled contractual expectations of parties to contracts that have not been filed, by raising the possibility that non-filed contracts could be invalidated. Finally, the incorrect treatment of certain contracts as subject to Section 252 impedes the ability of ILECs and their competitors to develop pro-competitive and creative arrangements that serve to advance local competition. As a matter of public policy, any interpretation of the 1996 Act should be one that encourages ILECs and CLECs to meet to resolve issues on a regular basis. By imposing a very broad standard, there will be a major impediment to the parties' ability to understand when their interactions require regulatory review.

**B. Staff's Proposed Filing Standard Reaches Agreements Not Properly Subject to the Requirements of the Act.**

Staff recommends defining "interconnection agreement" broadly to encompass "any contractual agreement or amendment which relates to or affects interconnection, wholesale services or network elements between an ILEC and another carrier in Arizona." (Supp. Report at 6.) This standard would bring matters under the regulatory scope of Section 252's filing and pre-approval processes that are outside the ILEC's provisioning of services under Section 251(b) and (c) and that Congress intended would be negotiated between ILECs and CLECs without regulatory oversight. First, on a practical level, such an all-encompassing broad definition of "interconnection agreement" would bring interactions between ILECs and CLECs to a standstill:

Virtually *everything* that ILECs and CLECs do could be said in some manner to “relate[] to or affect[] interconnection, wholesale services or network elements.” Without any limiting principle, the proposed standard does not honor the balance struck by Congress in the 1996 Act between the efficiency of privately negotiated business relationships and the extra protection of some regulatory oversight. Rather than engage in any line-drawing as to whether an agreement must be delayed for 90 days while it is filed and approved, this standard simply erases the line.

Second, as stated above and at the very least, Staff’s proposed standard should be limited to agreements regarding the provision of *Section 251(b) and (c)* services to Arizona CLECs. In its Supplemental Report and Recommendation, Staff did not define the term “wholesale services” as it was used in Staff’s definition of “interconnection agreement.” Section 252(a)(1) refers to agreements to provide “interconnection, services, or network elements pursuant to section 251” and requires that such agreements, when filed, include a “detailed schedule of itemized charges for interconnection and each service or network element included in the agreement” (emphasis added). Section 252(a)(1)’s reference to agreements pursuant to Section 251 is an explicit reference to the duty under 251(c)(1) to negotiate agreements “to fulfill the duties described in paragraphs (1) through (5)” of Section 251(b). If an agreement addresses the rates and/or the key terms and conditions of interconnection, matters subject to Sections 251(b) and (c), then the filing and prior approval requirements apply to this specific set of business relationships (*i.e.*, agreements to pay a certain amount and to receive certain specified interconnection, services, or elements). But the statute, by its terms, does not require filing or prior approval of agreements that do not address the rates, terms, and conditions of interconnection matters subject to Sections 251. Accordingly, any standard endorsed by Staff must be clear that, to the extent an agreement does not govern the rates, terms, and conditions of

“interconnection, services, or network elements pursuant to section 251(b) and (c),” that agreement does not fall within the Section 252(a)(1) filing and prior approval requirements.

Third, settlement agreements that resolve disagreements between ILECs and CLECs and do not change existing or future rates or terms of interconnection are not interconnection agreements subject to filing under Section 252(a). This should hold true even if the dispute related to prior conduct pertaining to elements or services that are subject to Section 251. For example, Section 252 should not apply to settlement agreements providing for payments to resolve disputes between parties over the measurement of traffic volumes, the accuracy of billing processes, billing or payments generally for such services, or any dispute that does not alter the terms of the underlying interconnection agreement. This would be consistent with the FCC's consistent treatment of settlement agreements relating to tariffed services under the 1996 Act: settlement payments need not be tariffed, and do not violate the statutory prohibition of unreasonable discrimination or unlawful rebates.<sup>2/</sup> Given that negotiated agreements under Section 252 were intended to be less inclusive than historically micro-managed tariffs, the case is even stronger that such settlement provisions should not be subject to the Section 252 filing or approval requirements.

Moreover, applying Section 252 to settlement agreements would disserve the public interest, because requiring public disclosure and third-party access to the terms of settlement agreements would deter parties from settling their disputes. It is undisputed that the public interest favors amicable dispute resolution.<sup>3/</sup> And deterring parties from entering settlements

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<sup>2/</sup> *Allnet Communications Services, Inc. v. Illinois Bell Tel. Co.*, 8 FCC Rcd 3030, 3037, ¶¶ 32-33 & n.78 (1993) (rejecting contention that award of damages to a customer in a complaint case, or a carrier's payment to a customer in settlement of such a dispute, constitutes violation of non-discrimination duty)

<sup>3/</sup> *See, e.g., McDermott v. AmClyde and River Don Castings, Ltd.*, 511 U.S. 202 (1994) (“public policy wisely encourages settlements”, *id.* at 215, and a rule that “discourages settlement and leads to unnecessary ancillary litigation” is “clearly inferior” to one that promotes settlement of disputes, *id.* at 211); *accord, Bergh v. Dept. of*

would force regulators and courts to resolve many more disputes that could be settled by the parties. Not only would this be administratively burdensome, but more importantly it could well lead to the imposition of solutions that may be inferior to those that the parties could have worked out on their own.

Other state agencies and a state commission agree that Section 252(a) does not extend to settlement agreements without prospective terms. For example, the witness offered by the Minnesota Department of Commerce as an expert testified that settlement agreements that settle past disputes and do not make changes to the parties' interconnection agreements on a forward-looking basis, even where the payments will be made over time and as a credit against future billings, do not need to be filed.<sup>4/</sup> In addition, the Iowa Utilities Board (the "Iowa Board") ordered that Qwest submit for approval all unfiled agreements meeting the Iowa Board's definition of an interconnection agreement.<sup>5/</sup> Qwest's Compliance Filing, submitted to the Iowa Board on July 29, 2002, was explicitly consistent with Qwest's understanding that compromise settlement agreements of past, historical disputes that do not affect or change either existing or future terms of an interconnection agreement do not constitute an amendment to the interconnection agreement under Section 252(a).<sup>6/</sup> There were no CLEC objections to such an approach in any filed comments, and on August 26, 2002, the Iowa Board issued an Order that

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*Transportation*, 794 F.2d 1575, 1577 (Fed. Cir. 1986), citing *United States v. Contra Costa County Water District*, 678 F.2d 90, 92 (9<sup>th</sup> Cir. 1982); *Stotts v. Memphis Fire Dept.*, 679 F.2d 541, 565 (6<sup>th</sup> Cir. 1982); *Airline Stewards & Stewardesses Ass'n v. American Airlines*, 573 F.2d 960, 963 (7<sup>th</sup> Cir. 1978); *Florida Trailer & Equipment Co. v. Deal*, 284 F.2d 567, 571 (5<sup>th</sup> Cir. 1960); *Emmons v. Superior Court*, 192 Ariz. 509, 512, 968 P.2d 582, 585 (Ariz. Ct. App. 1979) ("Arizona's law has long favored compromise and settlement.").

<sup>4/</sup> *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, MPUC Docket No. P-421/C-02-197, OAH Docket No. 6-2500-14782-2, Transcript of Proceedings (hereinafter "Minnesota Transcript"), Vol. I, Testimony of W. Clay Deanhardt, at 126:23-127:24.

<sup>5/</sup> The Iowa Board defined an interconnection agreement subject to Section 252's filing requirements as: "a negotiated or arbitrated contractual arrangement between an ILEC and a CLEC that is binding; relates to interconnection, services, or network elements, pursuant to § 251, or defines or affects the prospective interconnection relationships between two LECs." *Order Making Tentative Findings, Giving Notice for Purpose of Civil Penalties, and Granting Opportunity to Request Hearing* at 8, May 29, 2002, Docket No. FCU-02-2.

the settlement agreements are not subject to Section 252.<sup>7/</sup> The Iowa Board's Order included a determination that the *Confidential Amendment to Confidential Billing Settlement Agreement* dated October 26, 2000 between Qwest and McLeod – identified by Staff as subject to Section 252 – was not required to be filed.

Finally, the CLEC data responses in this docket support the exclusion of certain settlement agreements. As Staff noted in its Supplemental Report and Recommendation, “[v]irtually all of the CLECs, even those with billing settlement agreements and letter agreements which Staff identified as ‘interconnection agreements’, believed that all of their interconnection agreements had already been filed with the Commission for approval.” (Supp. Report at 4.) In particular, ELI expressly stated that it does not consider certain billing settlement agreements between Qwest and ELI to be interconnection agreements as defined by the 1996 Act.<sup>8/</sup> Similarly, Covad stated that it did not believe filing was required for agreements that “resolved a specific, discrete dispute between the companies” and “did not contain any terms and conditions that applied on a going-forward basis.”<sup>9/</sup>

Under the terms of the 1996 Act, prior filing and approval is required only for a “schedule of itemized charges” and related service descriptions. Section 252(a) expressly refers to these matters, and legislative history suggests that Congress did not intend a broader pre-effective approval process to interfere with normal business activity.

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<sup>6/</sup> *Qwest Corporation's Compliance Filing*, July 29, 2002, Docket No. FCU-02-2.

<sup>7/</sup> *Order Granting Request for Confidentiality*, August 26, 2002, Docket No. FCU-02-2.

<sup>8/</sup> ELI's Response to Staff 1-3 of Arizona Corporation Commission Staff's First Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271, July 24, 2002 (attached as Exhibit E to Staff's Supplement Report and Recommendation).

<sup>9/</sup> Covad's Response to Staff 1-3 of Arizona Corporation Commission Staff's First Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271, July 24, 2002 (attached as Exhibit D to Staff's Supplement Report and Recommendation).

## **II. AGREEMENTS IDENTIFIED BY STAFF AS SUBJECT TO SECTION 252(E)**

### **A. Several of the Agreements Identified by Staff Have Been Filed As Interconnection Agreement Amendments**

Multiple agreements that were listed on Staff's Exhibit G were incorporated into interconnection agreements or amendments and filed with the Arizona Corporation Commission. That is, some agreements contemplated that the terms of the agreement were to be integrated into an amendment of the underlying interconnection agreement and filed with the Commission. Qwest respectfully suggests that a formative agreement to amend an interconnection agreement, or one that subsequently results in a filed amendment, is entirely consistent with the purposes of Section 252, and the formative agreement should not have to be filed under Section 252 as long as the amendment is effectuated. At the very least, the failure to file the original agreement that results in a filed interconnection agreement should not be the subject of any penalty assessments.

For example, the terms and conditions of the McLeod Amendment to Confidential Billing Settlement Agreement dated 10/26/00 (No. 9 on Exhibit G) were incorporated into the Fourth Amendment to the Interconnection Agreement between McLeod USA Telecommunications Services, Inc and Qwest Corporation under Docket Nos. T-01051B-00-1058 and T-03267A-00-1058 on December 26, 2000. The terms and conditions of the GST Confidential Billing Dispute Settlement Agreement and Release dated 01/07/00, (no. 23 on Exhibit G) were integrated into the Local Interconnection Agreement between US West Communications, Inc. and GST Net (AZ), Inc. for Arizona, Agreement Number CDS-990708-0275 under Docket Nos. T-01051B-00-0420 and T-03155A-00-0420 on June 15, 2000, administratively approved on November 9, 2002, Decision No. 63036. The Operator Services Agreement between Allegiance Telecom of Arizona, Inc and Qwest Corporation dated 06/10/02 (no. 27 of Exhibit G) was incorporated into the Operator Service Amendment to the

Interconnection Agreement between Qwest Corporation and Allegiance Telecom of Arizona, Inc. and filed on August 14, 2002 under Docket No. T-01051B-02-0671.<sup>10/</sup> Finally, the terms of *Confidential Billing Settlement Agreement* between Allegiance Telecom and Qwest dated December 24, 2001 were submitted to the Commission as an amendment to the parties' interconnection agreement on June 6, 2002 under Docket No. T-01051B-02-0426.

**B. Other Agreements Identified by Staff Have Been Either Terminated or Superseded**

As Staff acknowledged, many of the agreements it identifies as being subject to Section 252 have been terminated. (Supp. Report at 8 and Exhibit I.) Qwest has attached a chart of the agreements identified by Staff that have been terminated or superseded as Exhibit A. These agreements include the *Confidential Billing Settlement Agreement and Release* dated December 30, 1999 between U S WEST and ELI, which terminated by its own terms on December 31, 2001. The two amendments to that original agreement that were also identified by Staff have also expired either by their own terms (in the case of the third amendment) or by reason of the original contract expiration (in the case of the first amendment). Similarly, the *Confidential Billing Dispute Settlement Agreement and Release* dated January 7, 2000 between U S WEST and GST Telecom also expired by its own terms on December 31, 2001. The terms of other agreements have been superseded by other agreements between the parties. (See Exhibit A.) Finally, the *Confidential Billing Settlement Agreement* between Allegiance Telecom and Qwest dated December 24, 2001 has been superseded by the June 12, 2002 cost docket order in Arizona

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<sup>10/</sup> Qwest does not believe that this or similar agreements are subject to the filing requirements of Section 252. However, on May 10, 2002, Qwest committed to the Commission that it would file all future contracts, agreements, and letters of understanding negotiated with CLECs that create obligations in connection with Sections 251(b) or (c). Qwest believes that this "all obligations" standard is overbroad and, as here, results in the filing of agreements that are not properly within Section 252's requirements. However, pending a determination by the FCC, Qwest will continue to comply with this policy.

and previously submitted to the Commission as an interconnection agreement amendment as discussed in Subsection A *supra*.

**C. Certain Agreements Identified by Staff Are Merely Contract Forms for Services Provided for in Approved Interconnection Agreements**

Staff identified four of Qwest's contracts with Allegiance as being subject to the filing requirement of Section 252(e). Three of these agreements – the *Internetwork Calling Name Delivery Service Agreement*, the *Directory Assistance Agreement*, and the *Operator Services Agreement*<sup>11</sup> – are form contracts for services already provided for in approved interconnection agreements. Qwest maintains form documents for services such as signaling, call-related databases, directory assistance, and operator services. These services are offered and described in filed and approved interconnection agreements or in Qwest's SGAT. These form contracts merely give effect to the terms in the filed agreements or the SGAT and are substantively identical for every CLEC. Qwest does not consider these contracts to be interconnection agreements because they simply memorialize a request for a service that is described in an interconnection agreement. However, Staff apparently believes that these form contracts fall within the scope of Section 252(e). Qwest has discovered an additional 10 such agreements that have not been filed for approval with the Arizona Commission and, accordingly, is producing those agreements with this Response as Exhibit B.

**D. The McLeod Purchase Agreement Is Not Subject to Section 252, and There Is No Related Oral Agreement.**

Staff concluded – without giving Qwest an opportunity to respond and present evidence – not only that the October 26, 2000 Purchase Agreement with McLeod was subject to Section 252(e) but also that Qwest had an oral agreement with McLeod “concerning additional product amounts to be purchased by Qwest under a written purchase agreement.” (Supp. Report at 5.)

Qwest requests that the Commission not accept Staff's recommendation that Qwest be required to file and be penalized for an agreement that Qwest did not enter, based on allegations Qwest has not been given an opportunity to refute. As discussed in Section III *infra*, Qwest is prepared to oppose Staff's conclusions regarding its contracts with McLeod at an evidentiary proceeding if necessary – as it did in front of the Minnesota Commission. However, Qwest believes that a hearing is not necessary to demonstrate that the Purchase Agreement is not subject to Section 252.

The written agreement between Qwest and McLeod belies any allegation that the parties orally agreed to any volume purchase discount. Specifically, the written agreement makes no mention of any discount, and provides: "This [Purchase Agreement] may be amended or altered only by written instrument executed by an authorized representative of both Parties."<sup>12/</sup> Any allegation of a discount is also contradicted by McLeod's treatment of the payments it received from Qwest as revenue, consistent with the terms of the written take or pay agreement, and inconsistent with the terms of an alleged oral agreement for a discount. Finally, it is not credible that McLeod, which had a highly contentious relationship with Qwest, would have accepted an oral agreement that contradicted the terms of a written agreement that expressly disclaimed the existence of any other agreements, especially an agreement that, as alleged by the Department, obligated Qwest to pay [TRADE SECRET] to McLeod.

The only witness at the Minnesota hearing with first-hand knowledge of the relevant negotiations between Qwest and McLeod, Audrey McKenney, testified that Qwest did not enter into such an agreement. Ms. McKenney testified that during the parties' negotiations, McLeod repeatedly asked Qwest for a volume term discount, and Qwest – after considering those requests

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<sup>11/</sup> See Exhibit G to Staff's Supplemental Report and Recommendation, at Nos. 25-27.

<sup>12/</sup> § 1.2.

and performing financial calculations – rejected McLeod’s requests.<sup>13/</sup> Blake Fisher, a former employee of McLeod who has alleged that Qwest entered into an oral agreement, refused to testify at the Minnesota hearing and thereby subject his story to cross-examination in a setting other than a discovery deposition. Mr. Fisher contends that Ms. McKenney was a participant on a phone call during which he claims Qwest and McLeod orally agreed to a volume term discount.<sup>14/</sup> Ms McKenney, who Mr. Fisher acknowledged was a participant in the telephone calls in which Qwest and McLeod reached their final agreement, denied that there was any such oral agreement for a discount and testified that the final agreement was the written take or pay agreement with the fixed minimum amount of purchases.<sup>15/</sup> Moreover, the draft agreement that was authored and created by McLeod and sent to Qwest on October 23, 2000 – just before the final contract was agreed to by the parties – was in the form of a take or pay with guaranteed profits and did not include a discount.<sup>16/</sup> This further confirms Ms. McKenney’s testimony that before the final documents were drafted, Qwest rejected McLeod’s requests for a volume term discount, and that McLeod understood and acted consistently with Qwest’s rejection of a discount.

The final agreement between the companies was reduced to writing in the form of two purchase agreements executed by Qwest Communications Corporation (“QCC”) and McLeod on October 26, 2000. Under the terms of the McLeod Purchase Agreement, McLeod agreed to purchase from QCC and its subsidiaries a minimum amount of “telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements,

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<sup>13/</sup> *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, MPUC Docket No. P-421/C-02-197, OAH Docket No. 6-2500-14782-2, Direct Testimony of Audrey McKenney, at 6:20-7:2.

<sup>14/</sup> Deposition of Blake Fisher (“Fisher Dep.”), at 36:5-37:11.

<sup>15/</sup> Minnesota Transcript, Vol. V, Testimony of Audrey McKenney, at 137:25-138:4; 154:25-156:2.

<sup>16/</sup> Exhibit 463; Rebuttal Testimony of Audrey McKenney, at 14:17-15:13.

capacity, termination or origination services, switching or fiber rights.” The total value of McLeod’s commitment to QCC is [TRADE SECRET]. Under the terms of the Qwest Purchase Agreement (which Staff now contends is subject to Section 252), QCC agreed to purchase quarterly between January 1, 2001 and December 31, 2003 a set minimum amount of products from McLeod. The total value of QCC’s commitment to McLeod is [TRADE SECRET].<sup>17/</sup>

Contrary to Staff’s contention, the Purchase Agreement executed by Qwest and McLeod on October 26, 2000 under which Qwest commits to purchase a minimum amount of services from McLeod is not subject to the filing requirements of the Act. Agreements by QCC to purchase goods or services from vendors, including CLECs, are not regulated by the Act of 1996, because such agreements do not constitute rates or terms of interconnection or unbundled network elements. Volume purchase obligations are normal business transactions across many industries, including the telecommunications industry. An ILEC’s contracts to purchase services from CLEC vendors do not affect the terms of the CLEC’s interconnection, and, therefore, are not within the filing requirements of the 1996 Act. The Iowa Board agreed with this conclusion and recently ordered that QCC’s volume purchase commitment to McLeod is not within Section 252(a).<sup>18/</sup>

### **III. SCOPE OF FURTHER SECTION 252 PROCEEDINGS**

#### **A. Penalties Should Not Be Assessed, Because the Standard is Not Subject to Precise Definitions.**

Qwest’s decisions to file or not to file agreements represented a good faith attempt to comply with the law as Qwest understood it at the time of the formation of the agreements identified by Staff. Qwest did not pull that understanding out of thin air, but based it reasonably

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<sup>17/</sup> Both the McLeod Purchase Agreement and the QCC Purchase Agreement are take or pays, meaning that in the event the purchaser failed to meet the minimum, it agreed to pay the vendor the difference between the amount of actual purchases and the amount of the minimum. Direct Testimony of Audrey McKenney, at 17:4-7.

on the language of the 1996 Act and previous interpretations of Sections 251 and 252.<sup>18/</sup> Even the witness offered by the Minnesota Department of Commerce as its own expert admitted that neither the FCC, any state Commission, nor any court in the United States had ever defined the scope of agreements that ILECs must file pursuant to Section 252.<sup>19/</sup> And perhaps even more to the point, Qwest's detractors cannot agree on the governing standard.<sup>21/</sup>

Filings by the parties to these proceedings, as well as the CLECs' responses to discovery served by Staff, illustrate the extent of the uncertainty and dispute regarding the scope of Section 252's filing requirements. For example, of the 48 CLEC respondents, only five believed that they had interconnection agreements with Qwest that were not filed. And, of these, four were typical interconnection agreement amendments that were filed within Qwest's processes after the CLECs had responded to the data requests. (Supp. Report at 4.) In other words, there are almost no unfiled agreements that other CLEC-parties thought were interconnection agreements that had to be filed. Yet, Staff identified 28 agreements that under its own standard should have been filed, and AT&T – Qwest's most vocal adversary on this issue – specifically identified 20.<sup>22/</sup>

In addition, several CLECs affirmatively stated that they did not believe that the unfiled agreements identified by Staff were interconnection agreements that had to be filed. In particular, McLeod stated it believed that "all agreements required to be filed pursuant to 47

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<sup>18/</sup> *Order Granting Request for Confidentiality*, August 26, 2002, Docket No. FCU-02-2.

<sup>19/</sup> See *Petition for Declaratory Ruling of Qwest Communications International Inc.*, WC Docket No. 02-89, at 8-18.

<sup>20/</sup> Minnesota Transcript, Vol. I, Testimony of W. Clay Deanhardt, at 131:13-20.

<sup>21/</sup> No fewer than five different standards for which voluntarily negotiated agreements must be filed under Section 252(e) – each of which yields disparate results – have been proposed by parties to proceedings here and in other states.

<sup>22/</sup> See AT&T's Comments on Section 252(e) of the Act and Response to Qwest's Comments Regarding Filing Obligations.

In its Comments on Supplemental Staff Report and Recommendation, AT&T identifies an additional 16 agreements that it believes should be filed for Commission approval. Qwest explained why those agreements are not subject to Section 252 in Attachment 2 to Qwest Corporation's Comments Regarding Filing Obligations. AT&T

U.S.C. Sections 251 and 252 have been filed for approval.”<sup>23/</sup> Moreover, as noted above, ELI expressly stated that it does not consider certain billing settlement agreements between Qwest and ELI to be interconnection agreements as defined by the 1996 Act,<sup>24/</sup> and Covad stated that it did not believe filing was required for agreements that “resolved a specific, discrete dispute between the companies” and “did not contain any terms and conditions that applied on a going-forward basis.”<sup>25/</sup> Also, Covad specifically mentioned the Settlement Agreement (Facilities Decommissioning) as *not* being subject to Section 252(e),<sup>26/</sup> yet Staff now recommends penalties for Qwest’s good faith belief (consistent with Covad’s) that the agreement did not need to be filed.

Another area of confusion – as acknowledged by Staff – is whether CLECs share filing responsibilities with ILECs. In its responses to Staff’s discovery, Eschelon stated that it does not share filing responsibility with an ILEC, because an ILEC “has superior access to information relevant to whether a term or condition is of the type for which filing is required.”<sup>27/</sup> Eschelon’s belief that it lacks information or is otherwise unable to make filing determinations only shows how imprecise the Section 252(e) standard currently is. The standard should be based on the

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presents no reason why Staff’s and Qwest’s determinations that these agreements fall outside the filing requirements should be second-guessed now.

<sup>23/</sup> McLeod’s Response to Staff 1-2 of Arizona Corporation Commission Staff’s First Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271, July 24, 2002 (attached as Exhibit E to Staff’s Supplement Report and Recommendation).

<sup>24/</sup> ELI’s Response to Staff 1-3 of Arizona Corporation Commission Staff’s First Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271, July 24, 2002 (attached as Exhibit E to Staff’s Supplement Report and Recommendation).

<sup>25/</sup> Covad’s Response to Staff 1-3 of Arizona Corporation Commission Staff’s First Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271, July 24, 2002 (attached as Exhibit D to Staff’s Supplement Report and Recommendation).

<sup>26/</sup> *Id.*

<sup>27/</sup> Eschelon’s Response to Staff 2-6 of Arizona Corporation Commission Staff’s Second Set of Data Requests to Qwest and the CLECs in Arizona, Docket No. RT-00000F-02-0271 (attached as Exhibit E to Staff’s Supplement Report and Recommendation).

1996 Act as applied to the subject matter of the agreement, and a CLEC should know just as well as an ILEC whether Section 252(e) applies – but apparently Eschelon does not.

Even Staff acknowledges that its own standard is by no means the only reasonable one. Staff observes, “While Staff has chosen a broad interpretation, the FCC has not yet ruled on this issue, and there is always the possibility that its interpretation may differ from Staff’s interpretation.” (Supp. Report at 10, emphasis added.) Indeed, among the 28 agreements identified by Staff as being subject to Section 252(e) are two that the Iowa Board recently determined are not within the filing requirement as that Board interprets it.<sup>28/</sup> It is unfair and inappropriate for the Commission to levy fines against Qwest when the FCC has opened a docket in order to determine a standard, and even Staff recognizes that multiple reasonable interpretations of the filing requirements exist.

**B. There Can Be No Willful or Intentional Violation Of A Filing Requirement When, As Here, The Only Consensus Is, In Essence, That Qwest Should Know An Agreement Needing To Be Filed When It Sees It,<sup>29/</sup> Under Pain Of Administrative Sanctions.**

Even if Qwest got the law wrong, it is unfair, and possibly unconstitutional, to penalize Qwest for violating an unarticulated standard. A rule may be enforced only when “those subject to the rule are reasonably able to determine what conduct is appropriate.”<sup>30/</sup> Under this “fair notice doctrine,” “the well-established rule in administrative law [holds] that the application of a rule may be successfully challenged if it does not give fair warning that the allegedly violative

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<sup>28/</sup> Those agreements are the October 26, 2000 *Confidential Amendment to Confidential Billing Settlement Agreement* between Qwest and McLeod and the October 26, 2000 *Purchase Agreement* between QCC and McLeod. See *Order Granting Request for Confidentiality*, August 26, 2002, Docket No. FCU-02-2.

<sup>29/</sup> Cf. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (“I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . .”) (Stewart, J., concurring).

<sup>30/</sup> *In re N.P.*, 361 N.W.2d 386, 394 (Minn. 1985).

conduct was prohibited.”<sup>31/</sup> The doctrine “has now been thoroughly ‘incorporated into administrative law,’” and is grounded in the due process clause of the United States Constitution.<sup>32/</sup>

As such, where punitive proceedings serve “‘as the initial means for announcing a particular interpretation’ – or for making its interpretation clear,”<sup>33/</sup> an agency may not impose liability on a regulated party unless that party, “acting in good faith” and reviewing the regulations and public statements of the agency, “would be able to identify, with ‘ascertainable certainty,’ the standards with which the agency expects parties to conform.”<sup>34/</sup> But “[w]here, as here, the regulations and other policy statements are unclear, where the petitioner’s interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not ‘on notice’ of the jury’s ultimate interpretation of the regulations, and may not be punished.”<sup>35/</sup> An administrative body “cannot, in effect, punish a member of the regulated class for reasonably interpreting” the rules in question.<sup>36/</sup> The “extraordinary intuition or . . . the aid of a psychic . . . [is] more than the law requires.”<sup>37/</sup>

Qwest could not have knowingly or willfully violated a nonexistent standard. To require otherwise, and to impose penalties under the circumstances, would raise serious due process concerns. A statute must at minimum “give fair notice that certain conduct is proscribed.”<sup>38/</sup> Section 252(a)(1) does not give fair notice that the filing requirement covers interconnection

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<sup>31/</sup> *United States v. Chrysler Corp.*, 158 F.3d 1350, 1355 (D.C. Cir. 1998).

<sup>32/</sup> *General Electric*, 53 F.3d at 1329 (quoting *Satellite Broadcasting Co. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987)).

<sup>33/</sup> *Id.* at 1329 (quoting *Martin v. OSHRC*, 499 U.S. 144, 158 (1991)).

<sup>34/</sup> *Id.* (quoting *Diamond Roofing*, 528 F.2d at 649).

<sup>35/</sup> *Id.* at 1333-34.

<sup>36/</sup> 824 F.2d at 4.

<sup>37/</sup> 158 F.3d at 1357.

<sup>38/</sup> *Rabe v. Washington*, 405 U.S. 313, 314 (1972); see also *Palmer v. City of Euclid*, 402 U.S. 544 (1971); *Rabeck v. New York*, 391 U.S. 462 (1968).

agreements and every other agreement between an ILEC and CLEC, and it would be both unconstitutional and unfair for the Court or the Commission to penalize Qwest for failing to anticipate and comply with a standard that no authority had ever defined.

**C. Qwest's Extensive Corrective Actions Demonstrate Its Commitment to Regulatory Compliance and Counsel Against the Imposition of Penalties.**

Because Qwest acted promptly, upon learning that its filing standard was in dispute, to prevent any future violations, no penalties are necessary or appropriate here. Qwest has taken four separate steps in this regard:

*First*, Qwest has implemented new policies and procedures that are applicable to all new contracts with CLECs. Specifically, while Qwest's Declaratory Ruling Petition is pending, the company has voluntarily committed to file with the states all future contracts, agreements, and letters of understanding negotiated with CLECs that create obligations in connection with Sections 251(b) or (c). Qwest believes that this "all obligations" standard is overbroad, and that Section 252(a) does not require filing and prior state authority review and approval of any and all obligations agreed to between an ILEC and a CLEC. For example, regulatory approval should not be required for carrier-specific implementation details related to provisioning, Qwest-CLEC relationship management issues (such as meeting schedules and dispute resolution processes) and the like. Nevertheless, pending FCC action, Qwest will not draw lines in this area.

*Second*, Qwest has established a committee of senior managers to enforce compliance with this policy and any order the Commission issues on the subject. This committee meets on a regular basis (recently weekly) to review and determine whether Qwest must file particular agreements with state regulators.

*Third*, Qwest has taken steps to make available terms of older contracts. The company naturally has been concerned about its potential penalty liability with regard to second-guessing

of its past filing decisions in an area where the standards have not been clearly defined. Qwest has no objection to offering all CLECs in a state the same going forward terms it gives under contract to one local carrier. However, Qwest does not concede that all contracts with CLECs require prior approval, and will dispute any effort to read its extending such offers as an admission regarding the scope of Section 252's mandatory filing requirements.

That said, Qwest will post on its website all contracts with CLECs in states where it had Section 271 applications pending insofar as those contracts contained effective going forward obligations related to Section 251(b) and (c). Qwest will also make available such going forward terms to other CLECs under the same policies that apply under Section 252(i).

*Fourth*, Qwest is now taking a further step as a sign of its good faith by filing all such agreements under Section 252(e) in addition to posting them on its website. Specifically, Qwest has reviewed all of its currently effective agreements with CLECs in the Docket No. 02-148 and 02-189 states that were entered into prior to adoption of the new review policy described above. Qwest already had filed appropriate agreements with the Iowa Utilities Board in accordance with the Board's recent order. Qwest has now filed in the remaining eight states all such agreements that include provisions creating on-going obligations that relate to Section 251(b) or (c) which have not been terminated or superseded by agreement, commission order, or otherwise, and Qwest will file all such agreements with the Arizona Commission as well. Qwest will ask the Arizona Commission, as it has asked the commissions in other states, to approve the agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). In conformance with the

structure of Section 252, including the state-specific approval process, opt-in opportunities will be provided on a state-specific basis under Section 252(i).<sup>39/</sup>

**D. The Facts and Data Gathered by Staff Do Not Warrant Any Further Proceedings.**

Staff suggests that there should be a hearing on “the issue of why Qwest did not file the agreements with the Commission for approval and additional fines if appropriate in some cases.” (Supp. Report at 7.) Such a hearing is not necessary. Qwest did not file the agreements with the Commission for approval simply because it was not obligated to under Section 252(e). As Qwest demonstrated both here and in its Reply to Responses to Qwest’s Comments Regarding Filing Obligations – and as several CLECs agree – the agreements identified by Staff and AT&T are outside the scope of the Act filing requirements. Moreover, the imposition of any fines is inappropriate and possibly unconstitutional, so any hearing on that issue is also not needed.

Qwest agrees with Staff that the additional Section 252(e) issues raised by RUCO at the Procedural Conference have been answered (Supp. Report at 7-8), with the exception of Staff’s conclusions regarding Qwest’s Purchase Agreement with McLeod. Staff has reached conclusions regarding the existence of an oral agreement amending written Purchase Agreements between the parties without providing Qwest any opportunity to refute the existence of such an agreement. As discussed above, Qwest denies that it entered into an oral agreement with McLeod for a volume discount. In the event the Commission decides to consider Staff’s conclusions and recommendations of penalties regarding the purchase agreement and the alleged oral agreement, Qwest hereby requests an evidentiary hearing on this matter.

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<sup>39/</sup> For the state commissions’ benefit, where Qwest has already made such filings, Qwest has marked, highlighted or bracketed those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, commission order, or otherwise. Qwest will follow the same process when it files such agreements with the Arizona Commission. This should reduce the confusion that could otherwise arise given that these contracts were not prepared as interconnection agreements, sometimes cover multiple subjects, and are of various ages.

Qwest agrees with Staff that the availability of opt-in for any agreement should be determined on a case-by-case basis after a CLEC makes such a request and further agrees that the Section 271 proceeding should be completed independently of the Section 252(e) proceeding. Indeed, Staff has already conducted a workshop in the Section 271 proceeding to address issues raised by Eschelon and McLeod. As Staff observed, the Section 271 workshop process has been comprehensive and effective, and any attempt to consolidate 271 issues with 252(e) issues could serve only to confuse the records of both proceedings. Any further proceedings relating to unfiled agreements should be held in the Section 252(e) proceeding and should not delay the Section 271 proceeding.

#### **IV. CONTEMPT PROCEEDINGS OR OTHER ACTION IN SECTION 271 PROCEEDINGS**

In addition to recommending that Qwest be required to pay fines for failing to file certain agreements, Staff maintains that Qwest's settlement agreements containing clauses that precluded participation or opposition in the Section 271 regulatory proceeding before the Commission "raises serious public policy concerns."<sup>40</sup> These concerns are based on Staff's belief that

an initial showing has been made that Qwest interfered with the 271 proceeding before the Commission and that the Commission's processes and the ability of two carriers to present their issues to the Commission were adversely impacted.<sup>41</sup>

As a result, Staff recommends that a "sub-docket to the 271 Docket" in which Qwest should be required "to demonstrate in formal written comments filed with the Commission, why it should not be held in contempt of Commission rules of process and orders."<sup>42</sup>

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<sup>40</sup> Supplemental Report at 10.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

Contrary to Staff's suggestion, Qwest's attempt to resolve disputes with CLECs by agreement is consistent with public policy, this Commission's rules and processes, and the manner in which the Commission has conducted its Section 271 proceedings. Moreover, the Department of Justice ("DOJ") and other states that considered the impact of these agreements have found that they raise no issue from a Section 271 perspective. Accordingly, no contempt proceeding is appropriate because Qwest did not fail to comply with any order, rule, or requirement of the Commission.

**A. Settlement of Disputes is Consistent with Public Policy in Arizona and Cannot Properly be Characterized as "Interference."**

Staff's comments relating to Qwest's settlement agreements with CLECs seem to be based on the assumption that those agreements are somehow inherently questionable. That assumption is contrary to the well-established public policy of Arizona, as well as this Commission's own rules and policies, favoring settlement. Settlements would be meaningless without a release of the matter settled, including an agreement not to further litigate. Qwest's settlement agreements with CLECs are consistent with these principles and must be viewed in the context of this strong public policy. Further, the facts underlying the agreements themselves demonstrate that there was nothing contemptuous about Qwest resolving the CLECs' concerns and entering into agreements memorializing such resolutions.

**1. The CLECs voluntarily exercised their business judgment in entering into these settlement agreements.**

Staff implies that the settlement agreements inappropriately impacted Eschelon's and McLeod's ability to present issues to the Commission. However, as Eschelon itself admits, these agreements represented the CLECs' legitimate business decisions to address issues outside of the

regulatory process. There is no basis for any suggestion that these agreements were anything other than voluntary agreements reflecting the CLECs' deliberate business decisions.

As an initial matter, it is important to note that the CLECs were not limited to resolving their issues by working directly with Qwest. For example, both Eschelon's and McLeod's interconnection agreements provide for arbitration of disputes.<sup>43</sup> Indeed, the settlement discussions continued to completion only because the CLECs believed they could better advance their business interests through private processes rather than regulatory confrontation. At any point during the negotiation process, the CLECs could have decided not to enter into an agreement with Qwest and, instead, pursue their claims through regulatory processes, including Section 271 proceedings. The CLECs freely chose to remain at the bargaining table.

The CLEC agreements not to participate in Section 271 proceedings were reached as part of business-to-business discussions in which the CLECs appropriately sought to advance their legitimate business interests. Indeed, in its June 24, 2002 letter to Commissioner Spitzer, Eschelon admits that it embraced the opportunity to work through issues on a business-to-business basis rather than litigating because "Eschelon's management wanted to believe in the promise of a better relationship under new management and attempted to use the non-litigious path touted by Qwest."<sup>44</sup> Thus, based on its business decision to work directly with Qwest to resolve its issues, Eschelon concedes that it properly agreed not to participate in Section 271 proceedings:

In the 271 dockets, Eschelon refrained from litigation while attempting to resolve disputes, including quality of service problems. *Eschelon's*

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<sup>43</sup> See Local Interconnection Agreement Between U S WEST Communications, Inc. and McLeodUSA Telecommunications Services, Inc. Agreement, Section (A)3.17.3; Agreement for Service Resale Between Advanced Telecommunications, Inc. (Eschelon) and U S WEST Communications, Inc., Section VI(Q).

<sup>44</sup> Letter dated June 24, 2002 from J. Jeffery Oxley of Eschelon to Commissioner Marc Spitzer ("June 2002 Eschelon Letter"), at pp. 1-2.

*conduct was legitimate behavior, particularly because Eschelon was not obligated to participate in the 271 proceedings.*<sup>45</sup>

There is no indication, nor could there be, that any CLEC was in any way forced to enter into these agreements under duress. Duress only occurs through a wrongful act or threat that "place[s] the party entering into the transaction in such fear as to preclude the exercise by him of free will and judgment."<sup>46</sup> Qwest had no power it could exert to overcome the CLECs' free will. Qwest could not compel them to abandon the regulatory process. There is no suggestion that Qwest threatened to violate its obligations to CLECs or commit any wrongful act to coerce the CLECs to agree. At any time they were free to terminate negotiations and seek other forms of resolution, including the regulatory process. The CLECs instead exercised their free will and business judgment in agreeing that they would have no reason to participate in the Section 271 proceedings if Qwest addressed their issues.

These admittedly voluntary agreements resulted from nothing other than the CLECs' conscious choice to work through their differences with Qwest because they determined that course to be in their best business interest. These agreements are entirely appropriate.

**2. The Commission and all parties to the Section 271 docket have known of Eschelon's participation decision since November 2000.**

Staff's recommendations appear to be based on the assumption that CLEC agreements not to participate in the Commission's Section 271 proceedings only recently came to light.<sup>47</sup> Such an assumption would be incorrect.

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<sup>45</sup> June 2002 Eschelon Letter at p.2 n.4 (emphasis added).

<sup>46</sup> *Dunbar v. Dunbar*, 102 Ariz. 352, 355-356, 429 P.2d 949, 952-953 (Ariz. 1967).

<sup>47</sup> Supplemental Report at 3 ("The significant additional discovery has escalated concerns regarding the business to business relationship between Qwest and Eschelon, and to a less degree Qwest and McLeod.").

All participants in this Commission's Section 271 proceeding have been aware of the existence of such agreements for nearly two years. Eschelon's Arizona counsel sent a letter dated November 3, 2000 to the Commission -- and all parties on the Section 271 docket service list -- advising all participants that Eschelon was involved in "continuing discussions with Qwest to try to resolve certain provisioning issues."<sup>48</sup> The November 2000 Eschelon Letter further advised that Eschelon would continue these discussions, but would participate in the upcoming workshop only "if sufficient progress is not made before that time."<sup>49</sup>

Thus, all participants in the Section 271 proceeding have known since November 2000 that (1) Eschelon was involved in discussions with Qwest in an effort to resolve its concerns on a business to business basis and (2) Eschelon would only participate in the Section 271 proceeding if it could not reach agreement with Qwest to resolve those concerns.

**3. The Section 271 docket most resembles an investigatory proceeding, which does not implicate due process rights of CLECs.**

In its December 8, 1999 Procedural Order, the Commission instituted a "collaborative workshop process" to evaluate the non-OSS Checklist Items. Staff notes in its Supplemental Report that "[t]he workshop process has worked very well; and it is the norm as far as 271 proceedings go nationwide."<sup>50</sup> Staff further identifies the primary benefit of the workshop process as its success in guiding the participants toward agreement: "It has been very effective in building consensus among all of the parties and reaching agreed upon resolutions of many issues."<sup>51</sup>

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<sup>48</sup> Letter dated November 3, 2000 from Thomas H. Campbell of Lewis and Roca LLP, on behalf of Eschelon, to Arizona Corporation Commission, referring to "Arizona Section 271 Proceeding/Docket No: T-00000A-97-0238 and reflecting that courtesy copies were sent to "All Parties on Service List" ("November 2000 Eschelon Letter").

<sup>49</sup> *Id.*

<sup>50</sup> Supplemental Report at 11.

<sup>51</sup> Supplemental Report at 11.

Thus, this consensus-based process is plainly not an adjudicatory proceeding. Rather, it is a unique proceeding that more closely resembles an investigatory proceeding. This distinction is important because it affects the participants' rights in the proceeding.<sup>52</sup> When the Commission resolves a conflict between a public service corporation and the public or rules on rate changes or property valuations, it acts in a judicial or quasi-judicial manner.<sup>53</sup> In these instances, due process requires that the Commission give affected parties notice and an opportunity to be heard.<sup>54</sup>

In contrast, the Section 271 proceeding does not resolve a specific conflict or involve rate or property valuation rulings. State commissions do not make legally binding decisions in Section 271 proceedings; rather, they make recommendations to the FCC regarding 271 applications.<sup>55</sup> Indeed, AT&T has acknowledged this in a proceeding arising from Qwest's 271 docket in Montana:

The Commission proceeding at issue cannot result in a binding order affecting [Qwest's] rights . . .

Under the Act, only the FCC will decide whether [Qwest] complies with the Act. The Act does, however, provide the Montana Commission with an opportunity to provide consultation to the FCC regarding [Qwest's] compliance with certain Section 271 requirements . . . .

Nothing within Section 271 permits the Commission to make any binding determination regarding [Qwest's] right to offer long distance services. That function has been accorded to the FCC. Moreover, nothing within Section 271 or any other statute requires the Commission to provide [Qwest] with a hearing of any sort in coming to the Commission's recommendation . . .

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<sup>52</sup> See, e.g., *Hannah v. Larche*, 363 U.S. 420 (1960).

<sup>53</sup> *Arizona Public Service Co. v. Arizona Corp. Com'n*, 155 Ariz. 263, 271, 746 P.2d 4, 12 (Ariz. Ct. App. 1987), (*aff'd in part by* 157 Ariz. 532).

<sup>54</sup> *Id.*

<sup>55</sup> 47 U.S.C. § 271(d)(2)(B) (the FCC shall consult with state commissions before making a determination).

There will be no determination of any legal right, duty or privilege of [Qwest] as a result of this proceeding.<sup>56</sup>

Contrary to AT&T's suggestion, as the subject of the inquiry Qwest does have rights in such a proceeding.<sup>57</sup> However, for the foregoing reasons, a state commission's Section 271 proceeding does not implicate CLECs' procedural due process rights.<sup>58</sup>

Because the Commission does not act in a judicial or quasi-judicial manner in the Section 271 proceeding, no CLEC, including Eschelon and McLeod, has any constitutionally protected interest in the proceeding.<sup>59</sup> Accordingly, both Eschelon and McLeod were free to waive any or all of their opportunity to participate in the Section 271 proceeding in accordance with their business interests.<sup>60</sup>

#### **4. Public policy favors settlement and release.**

Qwest's settlement agreements with Eschelon and McLeod -- including the provisions pursuant to which those companies agreed not to participate in Section 271 proceedings, oppose Qwest's Section 271 applications, or file complaints regarding certain issues -- are fully consistent with Arizona public policy.

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<sup>56</sup> Memorandum of AT&T Communications of the Mountain States, Inc. in Support of Motion to Dismiss Petition for Judicial Review, *U S WEST Communications, Inc. v. Montana Department of Public Service Regulation, et al.*, Montana First Judicial District, Lewis & Clark County, No. BDV 9900012 (Feb. 1, 1999).

<sup>57</sup> *Polaris Int'l Metals Corp v. Arizona Corp. Com'n*, 133 Ariz. 500, 508, 652 P.2d 1023, 1031 (1982).

<sup>58</sup> 155 Ariz. at 270, 746 P.2d 11 (court affirmed superior court's finding that the "reporting order was not a 'Rule' requiring compliance with the rule-making procedures of the Arizona Administrative Procedures Act, . . . [and therefore] no procedural due process rights were implicated.").

<sup>59</sup> See *Arizona Public Service Co. v. Arizona Corp. Com'n*, supra, at 271-272, 746 P.2d at 12-13.

<sup>60</sup> Cf. *Louisiana Pacific Corp. v. Beazer Material & Services, Inc.*, 842 F. Supp. 1243, 1254 (E.D. Cal. 1994) (the doctrine of unconstitutional conditions limits government's power to exact a waiver of constitutional right to judicial review in settlement by not allowing the government to present two undesirable alternatives, which is less likely to be a legitimate offer of compromise and more likely to be an attempt to unlawfully coerce the surrender of a constitutional right).

Arizona law recognizes the long-established principle that public policy favors settlement.<sup>61</sup> Accordingly, “Arizona’s law has long favored compromise and settlement.”<sup>62</sup> This is consistent with the general principle of administrative law favoring settlement of administrative proceedings.<sup>63</sup>

A release is an important part of every compromise and settlement, without which the settlement of disputes would be rendered all but impossible.<sup>64</sup> Under Arizona law, a party that releases a claim abandons it; once abandoned, the claim is extinguished and cannot be raised in any forum -- including regulatory proceedings.<sup>65</sup> Thus, an agreement not to initiate a proceeding, or covenant not to sue, is enforceable under Arizona law.<sup>66</sup> Indeed, public policy places such high value on settlement that a release of a claim actually constitutes an affirmative defense,<sup>67</sup> requiring dismissal of any subsequent action attempting to assert the released claim.<sup>68</sup>

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<sup>61</sup> See, e.g., *United Bank of Arizona v. Sun Valley Door & Supply, Inc.*, 149 Ariz. 64, 68, 716 P.2d 433, 437 (Ariz. Ct. App. 1986) (“Public policy favors settlement.”); *Speed Shore Corp. v. Denda*, 605 F.2d 469, 473, citing *Williams v. First National Bank*, 216 U.S. 582 (1910) (“It is well recognized that settlement agreements are judicially favored as a matter of sound public policy.”); *Shell Oil Company v. Christie*, 125 Ariz. 38, 39, 607 P.2d 21, 22 (Ariz. Ct. App. 1979) (“settlements of litigation are favored”).

<sup>62</sup> *Emmons v. Superior Court*, 192 Ariz. 509, 512, 968 P.2d 582, 585 (Ariz. Ct. App. 1979).

<sup>63</sup> *Arctic Slope Regional Corp. v. F.E.R.C.*, 832 F.2d 158, 164 (D.C. Cir. 1987).

<sup>64</sup> 66 Am. Jur. 2d Release § 2 (2001).

<sup>65</sup> *Cunningham v. Goettl Air Conditioning*, 194 Ariz. 236, 241, 980 P.2d 489, 494 (1999) (“When a party executes a release agreement, he or she abandons ‘a claim or right to the person against whom the claim exists or the right is to be enforced or exercised.’ The claim, once abandoned, is extinguished.”), citing 66 Am. Jur. 2d Release § 1, at 678 (1973).

<sup>66</sup> See, e.g., *Hovatter v. Shell Oil Co.*, 111 Ariz. 325,328, 529 P.2d 224, 226 (1974) (“Covenants not to sue should be construed in harmony with the intent of the parties.”); *Hall v. Schulte*, 172 Ariz. 279, 283, 836 P.2d 989, 993 (Ariz. Ct. App. 1992) (“When construing covenants not to sue, or any other contract, it is clear that if there are no ambiguities, interpretation is a question of law, and that merely because the parties disagree as to the meaning of an agreement, such disagreement does not create ambiguity. The interpretation which is placed on the agreement should be one that gives reasonable, lawful and effective meaning to all the terms.”).

<sup>67</sup> *White v. General Motors Corporation, Inc.*, 908 F.2d 669, 672 (10th Cir. 1990).

<sup>68</sup> *Little v. Brown*, 40 Ariz. 206, at 209 11 P.2d 610, 611 (1932).

Moreover, in negotiating a settlement agreement, the parties are not limited to issues that can only be raised in certain contexts.<sup>69</sup> In fact, parties often settle precisely because they agree to assume obligations or confer rights that fact finder would be unable to impose.<sup>70</sup> Thus, parties may settle both legal and factual issues<sup>71</sup> and may choose to waive whatever rights they see fit.<sup>72</sup> Thus, agreements not to participate or raise certain issues in a regulatory proceeding or file a complaint regarding certain issues as part of a settlement agreement are entirely consistent with Arizona law and public policy.

**5. Settlement is consistent with this Commission's rules and the Section 271 process itself.**

Further, the Commission itself has encouraged settlements of disputes between public service corporations and between public service corporations and their customers. For example, the Commission rules governing telephone utilities provide for the utility and its customer to invoke the complaint process only if "the customer and the utility cannot resolve a service and/or billing dispute."<sup>73</sup> These requirements have also been extended to CLECs' disputes with their customers.<sup>74</sup> There are similar rules for other classes of utilities such as electric, gas and water. Pursuant to these rules and the underlying policies, Staff regularly encourages utilities to settle disputes with their customers without invoking the formal complaint process.

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<sup>69</sup> See, e.g., *M & C Associates v. State of Florida, Department of Transportation*, 682 So.2d 640, 640-641 (Fla. App. 1996) ("There is no requirement that the terms of a settlement agreement be confined to issues cognizable in the litigation giving rise to the dispute. In fact, cases are often settled precisely because the parties agree to assume obligations or confer rights that a jury or the trial court would be unable to reach.").

<sup>70</sup> *Id.*

<sup>71</sup> *Budget Rent a Car of St. Louis v. Guaranty National Insurance*, 939 S.W.2d 412, 414 (Missouri Ct. App. 1997) ("The law encourages settlement and parties may settle both legal and factual issues.").

<sup>72</sup> See, e.g., *Romska v. Opper*, 594 N.W.2d 853, 857 (Mich. App. 1999) ("[The Michigan Court of Appeals] is aware of no legal rule in Michigan that precludes settling parties from waiving whatever rights they choose.").

<sup>73</sup> A.C.C. R-14-2-510(C)(1).

<sup>74</sup> A.C.C. R14-2-1115(B).

Approved interconnection agreements routinely permit the parties the option of negotiating or arbitrating disputes arising under the agreements rather than bringing them to the Commission. Similarly, SGAT Section 5.18.1 provides that "[d]ispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive, remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach." This Commission's approval of these interconnection agreements reflects its policy that proceedings before the Commission should not be the primary (or only) way in which carriers resolve inter-carrier disputes. Staff has, for example, recognized that, even under its broad interpretation of what agreements should be filed with this Commission, ILECs and CLECs regularly settle business disputes short of litigation, either in court or before the Commission, and that there is nothing inherently inappropriate about such settlements.<sup>75</sup> The burden upon the Commission if all disputes were brought before the Commission and litigated to resolution, rather than settled would be as unbearable for the Commission as it would be for the affected carriers.

Moreover, even in disputes before the Commission, there is nothing unusual about clauses in a settlement agreement that: (1) require a complainant to either dismiss the action or cease its participation in the matter if multiple complainants are involved and (2) maintain the confidentiality of the settlement. In multi-party dockets such as rate cases, the utility may negotiate separately with each of a group of intervenors and secure withdrawal from the case or support of the rate proposal or an amended rate proposal as a condition of settlement. Similarly, in multi-party dockets, intervenors may bring forth particular concerns they have, such as one specific rate in a general rate case or specific service concerns in a generic or merger docket.

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<sup>75</sup> Compare Exhibit F to Supplemental Report (List of All Confidential Unfiled Agreements) with Exhibit G to Supplemental Report (Revised List of Agreements Subject to 252(e) Filing Requirement).

There is nothing at all inappropriate about a settlement whereby the intervenors' concerns are resolved by a particular rate design or a new method or procedure to address a service problem.

In such circumstances, it is not unusual for the now satisfied intervenor to support the application or, at least to agree not to oppose it. It is also not unusual, once a settlement is reached, for each party to the settlement to hold the other party to the agreement. Thus, once a party has withdrawn a complaint pursuant to a settlement, the other party will oppose any refiling of the complaint and take the position that any such refiling breaches the settlement agreement. Indeed, there is little value to the settlement of a dispute that permits one of the parties to continue to litigate its complaint or otherwise present to a court or commission allegations of the facts that underlie the complaint that was settled.

Further, there is nothing inherently different about the Qwest/U S WEST merger or the 271 dockets from other Commission proceedings that would suggest attempts to resolve disputed issues through business-to-business negotiations are improper and punishable by contempt. Parties attempt to resolve disputes by settlement in all types of Commission cases, e.g., individual consumer complaints, rate cases, and merger dockets for the largest utilities in the State. For example, in the Qwest/ U S WEST merger, individual interveners raised any number of issues, many of which were not directly related to the merger itself.<sup>76</sup> In an attempt to focus on the main issues before the Commission, as posed by Staff and RUCO, Qwest reached agreements with several of those interveners resolving these unrelated disputes. There was nothing improper about Qwest's attempts to resolve those issues or its use of a settlement agreement as the means for doing so.

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<sup>76</sup> See e.g., Direct Testimony of Terry Moya, Covad Communications, at 16 (Qwest should be required to meet wholesale performances standards); Direct Testimony of Sarah Goodfriend, McLeod Communications, at 3 (same). Wholesale service quality was at that time the subject of a separate pending Commission proceeding and an issue in the pending 271 docket.

Similarly, the 271 workshop process as designed by Commission Staff was intended to permit parties to resolve issues and only bring forward those issues that could not be resolved between the parties. As noted above, the collaborative workshop process the Commission established was based upon building consensus among the participants. Throughout the checklist item workshops and the OSS test process, the Commission encouraged the parties to resolve all disputes by agreement. Only in the event that such resolution did not occur were impasse issues presented to the Commission for decision. Because of the Commission's overriding preference for the parties to work out their differences among themselves, the Section 271 workshops focused on areas of regarding which the participants could not reach agreement. Indeed, the parties were generally allowed to define those areas of dispute -- and the agendas for the workshops themselves -- by submitting lists of issues upon which agreement could not be reached.

Qwest's settlement of disputes in the agreements cited by Staff as non-participation agreements is consistent with this approach. A review of the Eschelon agreement itself evidences that Qwest's conduct in entering into the agreement was consistent with the goals of the 271 docket. This business-to-business agreement provides that Qwest and Eschelon will "(1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement, (2) arrange quarterly meetings between executives of each company to address unresolved and/or anticipated business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business to business dispute resolutions." The agreement further provided that "if the agreed upon Plan is in place by April 30, 2001, Eschelon agrees to not oppose Qwest's efforts regarding Section 271

approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements.”

This attempt to resolve existing issues between Qwest and Eschelon and to create a means to address future issues, whether successful or not, does not amount to contempt of the Commission. Just as an agreement whereby the parties agree to arbitration as an exclusive remedy is not a contempt of court, an agreement to resolve disputes without filing complaints with regulatory bodies or opposing Qwest's 271 efforts is likewise not contempt of the Commission. These provisions are consistent with the model created by Congress in the Telecommunications Act—ILECs and CLECs are to resolve issues by negotiation whenever possible and resort to arbitration or Commission proceedings only when they are unable to resolve differences by negotiation.

Moreover, the CLECs' participation in the Commission's Section 271 proceeding is and always has been wholly voluntary. Each carrier has been free to determine the extent to which it desired to participate in those proceedings, if at all. Carriers were free to make that decision based upon any business considerations or other factors they chose to consider.

Thus, Qwest's settlement of issues with CLECs is entirely consistent with the Commission's approach in the Section 271 proceedings. In short, there was nothing improper about efforts to resolve issues before the workshop on a checklist item started or outside of the workshop process. No statute, rule or order of the Commission (including the Commission order and procedural orders entered in the 271 docket) can be fairly read to preclude such business to business efforts to resolve dispute or as precluding normal settlements of disputed issues. There is simply no basis for asserting any contemptible action by Qwest.

**6. The DOJ and other state commissions that have considered the effect of Qwest's settlement agreements on Section 271 proceedings have found that nonparticipation of CLECs had no impact.**

Finally, it is important to note that the DOJ and several other state commissions have considered the effect of these same settlement agreements on Section 271 proceedings. Most found that a lack of participation by certain CLECs did not significantly impact the results of the Section 271 proceedings. For example, in its evaluation, the DOJ stated that "the fact that certain CLECs did not participate [in the three-year ROC OSS test process] does not appear to have had a significant impact on the result."<sup>77</sup>

After considering evidence presented at *en banc* workshops, the Colorado Public Utilities Commission squarely addressed the issue in its comments supporting Qwest's Section 271 application for authority in Colorado:

In a "but for" world, the potential impact of CLEC *non*participation in the collaborative process is, at worst, close to nil. Smaller CLECs have elected to avoid the § 271 process altogether for a variety of reasons. Several CLECs have consistently participated, and others have participated when and as it was in their best interests to do so. The vast majority of impasse issues in Colorado have similarly been presented to the multistate facilitator, the Washington Commission, and the Arizona [Commission] for resolution. At the end of the day, no SGAT provisions would be worded differently, prices would not be adjusted, and impasse issue resolutions would not be modified. Such certainty is the incremental benefit of holding open, exhaustive § 271 proceedings.<sup>78</sup>

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<sup>77</sup> Evaluation of the United States Department of Justice, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, WC Docket No. 02-148 (July 23, 2002) at 5.

<sup>78</sup> Evaluation of the Colorado Public Utilities Commission, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, WC Docket No. 02-148 (July 2, 2002) at 64-65.

The Washington Utilities and Transportation Commission similarly rejected the notion that Qwest's settlement agreements raise issues relating to a Section 271 proceeding in its comments supporting Qwest's Section 271 application for authority in Washington:

There will always be complaints about Qwest's behavior, competitive or anti-competitive, and this Commission has resolved and will continue to resolve those complaints. The issue here is whether there is anything that is sufficient to delay or give pause to our review of an application by Qwest under section 271. We do not find the evidence presented by the parties, individually or collectively, sufficiently unusual or disturbing to preclude a finding that an application would be in the public interest.<sup>79</sup>

Thus, Qwest's settlement agreements with Eschelon and McLeod do not impact this Commission's Section 271 recommendation. The open, collaborative three-year process this Commission established ensured the development of an exhaustive record upon which this Commission can confidently rely in making its recommendations to the FCC regarding Qwest's Section 271 application.

**B. A Contempt Proceeding Is Not Appropriate Because the Necessary Predicate -- a Violation of a Commission Order, Rule, or Requirement -- Has Not Been Established.**

Staff recommends that that a contempt proceeding be opened as a sub-docket in the Section 271 docket in which Qwest should be required "to demonstrate in formal written comments filed with the Commission, why it should not be held in contempt of Commission rules of process and orders."<sup>80</sup> Specifically, Staff claims that the following conduct "interfered" with Commission's proceedings:

- 1) including provisions in agreements that prevented opposition to its 271 application at the Commission,

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<sup>79</sup> Comments of the Washington Utilities and Transportation Commission, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming*, WC Docket No. 02-189 (July 26, 2002) at 32, quoting WUTC's 39<sup>th</sup> Supplemental Order ¶ 331.

<sup>80</sup> *Id.*

- 2) effectively precluding the participation of two parties at various stages of the Section 271 proceeding, and,
- 3) precluding parties from filing complaints with the Commission on these issues.

Contrary to Staff's assertion, as fully discussed above, Qwest's settlement agreements with CLECs are fully consistent with public policy. Even if the Commission were to set aside the public policy analysis, a contempt proceeding is not warranted here because the predicate for such a proceeding does not exist: the conduct Staff identifies does not violate any Commission order, rule, or requirement.

Arizona law provides that a contempt proceeding can be based only on a specific violation of an order, rule, or requirement of the Commission. A.R.S. Section 40-424(A) provides as follows:

If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars, which shall be recovered as penalties.

This requirement is consistent with hornbook law regarding contempt: "Punishment [for contempt] can only rest on a clear, intentional violation of a specific, narrowly drawn order; *specificity is an essential prerequisite of a contempt citation.*"<sup>81</sup> The essence of contempt is that a party fully understands, but chooses to ignore, a mandate; contempt cannot be based upon a vague requirement.<sup>82</sup>

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<sup>81</sup> 17 Am. Jur. 2d Contempt § 157 (1990) (citations omitted) (emphasis added).

<sup>82</sup> *International Longshoremen's Assn. v. Philadelphia Marine Trade*, 389 U.S. 64, 77 (1967) ("We do not deal here with a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate. We deal instead with acts alleged to violate a decree that can only be described as unintelligible. The most fundamental

Despite this requirement, no party has identified any Commission order, rule, or requirement that Qwest's specified conduct violates. Qwest is not aware of any Commission order, rule, or requirement that prohibits two parties from entering into a settlement agreement that includes a release and an agreement to cease further litigation. To the contrary, as fully discussed below, Qwest's settlement agreements -- including the provisions regarding participation in regulatory proceedings -- are consistent with public policy.

It would be unfair to penalize Qwest for violating an unarticulated requirement. A regulatory requirement must, at minimum, "give fair notice that certain conduct is proscribed."<sup>83</sup> A rule may be enforced only when "those subject to the rule are reasonably able to determine what conduct is appropriate."<sup>84</sup> Under this "fair notice doctrine," "the well-established rule in administrative law [holds] that the application of a rule may be successfully challenged if it does not give fair warning that the allegedly violative conduct was prohibited."<sup>85</sup> The doctrine "has now been thoroughly 'incorporated into administrative law,'" and is grounded in the due process clause of the United States Constitution.<sup>86</sup> Thus, imposition of penalties where no Commission order, rule, or requirement prohibits Qwest's conduct would raise serious due process concerns.

The Commission may choose to expand the meaning or application of its existing orders, rules, or requirements to address settlements and releases. However, fundamental notions of due process preclude the Commission from holding Qwest in contempt based on violation of such a

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postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension.") (citations omitted).

<sup>83</sup> *Rabe v. Washington*, 405 U.S. 313, 314 (1972); see also *Palmer v. City of Euclid*, 402 U.S. 544 (1971); *Rabeck v. New York*, 391 U.S. 462 (1968).

<sup>84</sup> *In re N.P.*, 361 N.W.2d 386, 394 (Minn. 1985).

<sup>85</sup> *United States v. Chrysler Corp.*, 158 F.3d 1350, 1355 (D.C. Cir. 1998).

<sup>86</sup> *General Electric*, 53 F.3d at 1329 (quoting *Satellite Broadcasting Co. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987)).

newly expanded rule.<sup>87</sup> Where punitive proceedings serve “as the initial means for announcing a particular interpretation’ – or for making its interpretation clear,”<sup>88</sup> an agency may not impose liability on a regulated party unless that party, “acting in good faith” and reviewing the regulations and public statements of the agency, “would be able to identify, with ‘ascertainable certainty,’ the standards with which the agency expects parties to conform.”<sup>89</sup> It would be unfair for the Commission to penalize Qwest for failing to anticipate and comply with an undefined requirement.

Because Qwest did not violate any existing Commission order, rule, or requirement, it would be inappropriate for this Commission to initiate a contempt proceeding.

## V. CONCLUSION

Prior to these and other state proceedings, a standard for what constitutes an interconnection agreement had not been articulated by any court or state or federal administrative body. In light of the fact that even Qwest’s detractors cannot agree on the scope of the Act’s filing requirements, Qwest cannot be penalized for reaching its own reasonable conclusions about which negotiated agreements must be filed and approved before they take effect. The inappropriateness of penalties is even more apparent given that several Arizona CLECs agree with Qwest’s decisions not to file the agreements at issue.

In addition, the filing standard proposed by Staff encompasses agreements that are not properly the subject of Section 252. Accordingly, Qwest asks that the Commission endorse Qwest’s articulation of the Section 252(a) standard, find that the agreements at issue were not required to be filed and reject Staff’s recommendation of penalties.

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<sup>87</sup> *State v. Powers*, 20 Ariz. 123, 126, 23 P.3d 668, 671 (Ariz. App. 2001) (“Moreover, we recognize that a judicial expansion of statutory language can violate a defendant’s due process right to fair warning.”)

<sup>88</sup> *Id.* at 1329 (quoting *Martin v. OSHRC*, 499 U.S. 144, 158 (1991)).

Further, Qwest cannot be subject to any contempt hearing by this Commission due to the absence of an essential requirement – there is no existing statute, rule or order of the Commission that prohibits Qwest from entering into settlement agreements like those at issue. Qwest conducted itself consistent with existing Arizona policy favoring resolution and settlement of disputes.

Based on the foregoing, Qwest does not believe that any further action on this matter is merited, and requests that this docket be closed. Moreover, Qwest asserts that any consideration of Qwest's 252(e) obligations is separate and distinct from the 271 docket, and under no circumstance, should the two dockets be consolidated.

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<sup>89</sup> *Id.* (quoting *Diamond Roofing*, 528 F.2d at 649).

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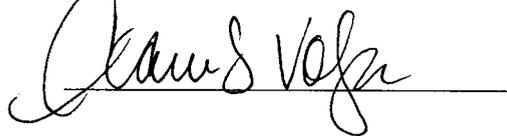
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A handwritten signature in cursive script, appearing to read "Klaus Volz", is written over a horizontal line.

1335734.1/67817.150

# EXHIBIT

A

TERMINATED AND SUPERSEDED AGREEMENTS

**Eschelon      Confidential Trade Secret Stipulation – 2/28/00**

Paragraph 7 relating to reciprocal compensation was superseded by the Amendment to the parties' Interconnection Agreement ("ICA") dated July 31, 2001 relating to bill and keep. Paragraph 10 relating to termination liability assessments ("TLAs") was specific to Minnesota and has since been superseded by the Minnesota TLA Order dated October 2, 2001. Paragraph 10 did not affect TLAs in Arizona and is therefore not relevant here. Paragraphs 11 and 12 relating to the dedicated provisioning team were superseded by the Trial Agreement between the parties dated July 21, 2000. Paragraph 14 relating to dispute resolution was superseded by the escalation procedures letter from Greg Casey (Qwest) to Richard Smith (Eschelon) dated November 15, 2000.

**Eschelon      Confidential Amendment To Confidential/Trade Secret Stipulation  
-    11/15/00**

This agreement was expressly terminated by paragraph 3(b) of the Settlement Agreement between Qwest and Eschelon dated March 1, 2002.

**Eschelon      Confidential Billing Settlement Agreement – 11/15/00**

The going-forward terms contained in this agreement were superseded by the Business Amendment to the parties' ICA dated November 15, 2000.

**Eschelon      Letter Agreement re: Daily Usage Information – 11/15/00**

The going-forward terms contained in this letter agreement were superseded by conversion to mechanized records.

**Echelon      Settlement Agreement Letter – 2/22/02**

This letter was a proposal for, and contained proposed terms of, a Settlement Agreement that was executed by the parties on March 1, 2002. Inasmuch as this letter was only a proposal, it did not need to be filed; regardless, its text has now been incorporated into the March 1, 2002 Settlement Agreement between the parties.

**Eschelon      Implementation Plan – 7/31/01**

This plan was terminated by paragraph 3(b) of the Settlement Agreement between Qwest and Eschelon dated March 1, 2002 except for Attachment 3 to the Plan which was, pursuant to paragraph 3(c) of that Settlement Agreement, filed as an amendment to the parties' ICA. That Amendment was filed with the Commission on May 17, 2002 and related to calculating local usage changes associated with UNE-E switching on inter and intra LATA toll traffic.

**McLeod Settlement Document re: Qwest Merger – 4/25/00**

All going-forward terms contained in this document have been incorporated into the Confidential Billing Settlement Agreement between the parties dated April 28, 2000 inasmuch as this document was a letter of intent that led to the execution of the formal Confidential Billing Settlement Agreement dated April 28, 2000.

**McLeod Purchase Agreement – 10/26/00 (10/02/00)**

This is a volume purchase agreement and does not contain any terms of conditions of providing interconnection services or unbundled network elements. See text of Qwest's corresponding comments filed herewith.

**ELI Amendment No. 1 to Confidential Settlement Agreement and Release  
- 6/21/00**

The going-forward terms contained in this amendment were terminated inasmuch as the original contract (dated December 30, 1999) expired by its terms on December 31, 2001. This amendment was also superseded by the Confidential Billing Settlement Agreement between the parties dated April 26, 2002 and an Amendment to the parties' ICA dated June 26, 2002 regarding term, dispute resolution and reciprocal compensation.

**ELI Amendment No. 3 to Confidential Settlement Agreement and Release  
- 7/19/01 (misabeled 4/26/02)**

The going-forward terms contained in this amendment were terminated by their specific terms. In addition, this amendment was superseded by the Confidential Billing Settlement Agreement between the parties dated April 26, 2002 and an Amendment to the parties' ICA dated June 26, 2002 regarding term, dispute resolution and reciprocal compensation.

**ELI Confidential Billing Settlement Agreement and Release – 12/30/99**

The going-forward terms contained in this agreement expired by their own terms on December 31, 2001. In addition, this agreement was also superseded by the Confidential Billing Settlement Agreement between the parties dated April 26, 2002 and an Amendment to the parties' ICA dated June 26, 2002 regarding term, dispute resolution and reciprocal compensation.

**XO(Nextlink) Confidential Billing Settlement Agreement – 5/12/00**

The escalation provisions in this agreement have been superseded by the escalation provisions contained in exhibit "B" of the Confidential Billing Settlement Agreement between the parties dated December 31, 2001.

**Global Crossing Settlement Agreement and Release – 9/18/00**

The going-forward terms contained in this agreement have been superseded by paragraph 2 of the Confidential Billing Settlement Agreement between the parties dated July 13, 2001.

**GST Confidential Billing Dispute Settlement Agreement & Release – 1/7/00**

The going-forward terms contained in this agreement have expired by their terms.

**Allegiance Confidential Billing Settlement Agreement – 12/24/01**

The going-forward terms contained in this agreement constituted an agreement between the parties to amend their ICA. This proposed amendment was subsequently formalized when the parties executed an Amendment to their ICA relating to coordinated installation with no testing, which Amendment was filed with the Commission for approval on January 22, 2002. In addition, these terms were superseded by the June 12, 2002 Cost Docket Order in Arizona.

**Worldcom Confidential Billing Settlement Agreement – 12/14/00**

With respect to paragraphs 2(A), (B), the portions relating to toll issues are not 251 services and therefore are not required to be filed. The remaining going-forward terms of this Agreement have been superseded by a Confidential Billing Settlement Agreement between the parties dated June 29, 2001 and the reciprocal compensation Amendment to the parties' ICA dated June 29, 2001. The terms relating to transit reports have expired by their terms.

# **EXHIBIT**

**B**

## ARIZONA

		<u>Type</u>
CDS-010321-0055	Adelphia Business Solutions Operations, Inc.	LIDB
CDS-010612-0009	Adelphia Business Solutions, Inc.	CLASS
CDS-990630-0040	Frontier Local Service, Inc.	OS
CDS-990630-0030	Frontier Local Service, Inc.	DA
CDS-001016-0031	Ionex Communications North, Inc.	OS
CDS-001013-0011	Ionex Communications North, Inc.	DA
DEN-980331-2401	U S WEST Wireless L.L.C.	TISCS
CDS-990921-0249	Verizon Avenue (fka One Point Communications)	OS
CDS-990921-0224	Verizon Communications, Inc.	DA
CDS-981020-0154	WinStar Wireless of Arizona, Inc.	OS

## LINE INFORMATION DATA BASE STORAGE AGREEMENT

Adelphia Business Solutions Operations, Inc. ("CLEC"), and Qwest Corporation ("Qwest"), a Colorado corporation, hereby enter into this Line Information Data Base Storage Agreement ("Agreement"). This Agreement may refer to CLEC or to Qwest as a Party to this Agreement. The service(s) described in this Agreement shall be provided in the state of Arizona.

WHEREAS, Qwest owns a Line Information Data Base ("LIDB") system that permits toll carriers and operator service providers to access and validate information regarding collect, bill to third number, calling card and public telephone check; and

WHEREAS, CLEC has end user information concerning public telephone check, collect and bill to third number restrictions and calling cards for its end users; and

WHEREAS, both Parties desire to store this data as part of Qwest's database.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

### 1. Scope of Agreement

A. Qwest and CLEC are suppliers of telecommunications facilities and services. Each of these telecommunications suppliers may permit its customers to use line number telephone calling cards ("cards") to initiate calls. Each of these suppliers may permit its customers to bill calls to accounts associated with cards, collect, bill to third number and public telephone check for the specific line number.

### B. CLEC will:

1. Provide initial line information data and update or. change data and license said data to Qwest for placement in Qwest's LIDB.
2. Provide and maintain necessary information to enable Qwest to provide services for which CLEC contracts with Qwest.
3. Ensure, to the extent possible, the accuracy of the data provided to Qwest for storage in Qwest's LIDB, and supply updated and changed data in a timely manner.

### C. Qwest will:

1. Include CLEC-provided data in Qwest's LIDB, and allow access to the data subject to Qwest negotiated agreements with local exchange carriers, toll carriers and operator services providers, allowing CLEC end users the same benefits of said agreements as enjoyed by Qwest end users.
2. Update CLEC data, as requested by CLEC.
3. Perform services provided under this Agreement and determine the applicable standard for the data, in accordance with operating methods, practices and standards in effect. Such practices include, but are not limited to, the practice of removing from valid data those data which incur fraud or uncollectible toll charges.

- D. Qwest will bill the query originator at the applicable tariffed rates and retain all amounts paid on all LIDB queries.

## **2. Term of Agreement**

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Public Utilities Commission in the state of Arizona. This Agreement shall become effective upon the latest signature date, and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other.

## **3. Independent Contractor**

CLEC and Qwest hereby declare and agree that each is engaged in an independent business and shall perform its obligations under this Agreement as an independent contractor and not as agent, employee, or servant of the other. Each has and hereby retains the right to exercise full control of and supervision over its performance of its own obligations hereunder and full control over the employment, direction, compensation, and discharge of its own employees assisting in the performance of such obligations.

## **4. Force Majeure**

A Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control including but not limited to: severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## **5. Limitation of Liability**

Under no circumstances shall either Party be liable to the other for any indirect, incidental, special, or consequential damages (including but not limited to loss of business, loss of use, or loss of profits) which arise in any way, in whole or in part, as a result of any action, error, mistake, or omission, whether or not negligence on the part of either Party occurs. One Party's liability to the other Party for direct, actual damages shall not exceed the amount required to correct the error, mistake, or omission under this Agreement.

## **6. Waiver**

The failure of a Party to assert any of its rights under any provision of this Agreement shall not constitute a waiver or a termination of such rights, this Agreement, or any of this Agreement's provisions.

## **7. Indemnification**

Both Parties to this Agreement shall indemnify and hold harmless the other Party, with respect to any third party claims, lawsuits, damages or court actions arising from service under this Agreement, to the extent that the indemnifying Party is liable or responsible for said third party claims, losses, damages, or court actions. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and when known, the facts constituting the basis for such claim.

In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to costs and attorney fees.

#### **8. Agreement Benefits Parties**

This Agreement benefits, and is intended to benefit, CLEC and Qwest. This Agreement does not in any way change, expand, or reduce any existing rights or obligations of any person who is not a Party to the Agreement.

#### **9. Entire Agreement**

This Agreement, together with all Exhibits, Notices, and any jointly executed written amendments to this Agreement constitutes the entire Agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

#### **10. Choice of Law**

This Agreement shall be governed by and construed in accordance with the Laws of the State of Colorado.

#### **11. Successors, Assignment**

Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

#### **12. Amendments**

This Agreement may be amended only by the execution of a written document signed by both Parties.

#### **13. Lawfulness of Agreement**

This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is so terminated but the Parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

#### **14. Notices**

All notices required by or relating to this Agreement shall be in writing and shall be sent to the Parties to this Agreement at their addresses set forth below, unless changed from time to time, in which event each Party shall notify the other in writing of such change. All such notices shall be deemed duly given if mailed, postage prepaid, and directed to the addresses then prevailing. If any questions arise about dates of notices, postmark dates control.

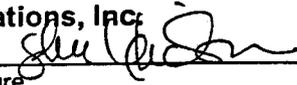
**CLEC**  
Adelphia Business Solutions Operations, Inc.  
Cory Hamilton  
4600 S. Syracuse, Suite 400  
Denver, CO 80237

**Qwest Corporation**  
Patty Snider  
1801 California Street, Suite 2130  
Denver, Colorado 80202

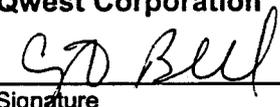
**15. Dispute Resolution**

Any claim, controversy or dispute between the Parties shall be resolved by binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C: 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

**Adelphia Business Solutions  
Operations, Inc.**  
  
\_\_\_\_\_  
Signature

**JOHN GLICKSMAN**  
Printed Name  
**V.P. GENERAL COUNSEL**  
\_\_\_\_\_  
Title  
4-17-01  
Date

**Qwest Corporation**  
  
\_\_\_\_\_  
Signature

**Cynthia Bell**  
Printed Name  
**Sales Executive**  
\_\_\_\_\_  
Title  
4-20-01  
Date

**CUSTOM LOCAL AREA SIGNALING SERVICES ("CLASS")  
NETWORK INTERCONNECTION AGREEMENT**

Adelphia Business Solutions, Inc. ("CLEC") and Qwest Corporation ("Qwest"), a Colorado corporation, hereby enter into this Custom Local Area Signaling Services ("CLASS") Network Interconnection Agreement ("Agreement"). This Agreement may refer to CLEC or to Qwest as a Party ("Party") to this Agreement. The service(s) described in this Agreement shall be performed in the state of Arizona.

**SECTION 1. SCOPE OF AGREEMENT**

This Agreement describes the terms and conditions under which both Parties agree to provide each other access to interconnect their respective networks for the provision of Custom Local Area Signaling Services ("CLASS"). Services provided under this Agreement are intraLATA services only and must be in compliance with the Common Channel Signaling Network ("CCSN") Interconnection Agreement for switched access services. In addition, all services provided for under this Agreement must be in compliance with all State and Federal rules and regulations.

Common Channel Signaling/Signaling System Seven Protocol is a digital network carrying signaling information which interfaces with Qwest's voice/data network for services using the American National Standards Institute Common Channel Signaling System Seven Protocol ("CCS/SS7").

CLASS, also known as Advanced Custom Calling Services, are a set of call management features that utilize the capability to forward a calling party's number between end offices. The screening capabilities these features provide afford end users greater control over their calls. The provision of this service is dependent on the installing of CLASS hardware and software in the end offices, and Signaling System 7 ("SS7") in the end office and all intervening switches. CLASS are currently offered on an intraLATA basis only.

The CLASS included in this contract may include one or all of the following services: Caller ID (Number Only), Last Call Return, Continuous Redial, Selective Call Forwarding, Selective Call Acceptance, Call Rejection, Anonymous Call Rejection, Priority Call, and Call Trace. The aforementioned list of CLASS services will not be available in all states. Qwest will notify CLEC, in accordance with Section 16, when new CLASS services become available in CLEC's Local Access Transport Area ("LATA"), or when certain CLASS services are discontinued.

**SECTION 2. TERM OF AGREEMENT**

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Public Utilities Commission in the state of Arizona. This Agreement shall become effective upon the latest signature date, and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other.

### **SECTION 3. BASIS OF COMPENSATION**

CLASS interconnections provided for under the terms and conditions of this Agreement will not be subject to usage rates. Global Title Translation (GTT) are not currently able to be measured in the SS7 environment. As a result CLEC and Qwest agree that CLASS interconnections provided to each other under this Agreement are reciprocal and that charges will not be applicable.

### **SECTION 4. DEFINITIONS**

Anonymous Call Rejection - Enables a customer to reject incoming calls that are blocked.

Call Rejection - Lets a customer block incoming calls from certain telephone numbers. The blocked calls route to a special denial announcement.

Call Trace - A service that gives customers another option in dealing with annoyance calls.

Caller Identification - Number Only - Lets a customer know the number of the calling party before the customer answers the phone. This feature requires Customer Premise Equipment (CPE) with a display screen.

CLASS - A set of capabilities made possible by the Common Channel Signaling Network (CCSN) and supporting software. The CLASS services provide management and security features to residence and small business customers enabling them to interact with the network on both incoming and outgoing calls.

Common Channel Signaling Network (CCSN) - A network signaling technology in which all signaling information between two or more nodes is transmitted over high-speed data links, rather than over the voice circuit. In the context of 800 Data Base Service, CCS refers to the network signaling technology which utilizes the Signaling System 7 (SS7) protocol as opposed to any other common signaling protocol used by other CCS applications.

Continuous Redial - Automatically prompts the central office to redial a busy number. A distinctive ring (short, short, long) lets the customer know when the call can be completed.

Global Title Translation (GTT) - In SS7 the process of translating a network layer address (e.g. an 800 number) to a point code, which is the SS7 level 3 address - used by the Message Transfer Part (MTP) for routing. For example, for 800 services, Global Title Translation is the translation from the 800 number to the point code of the database containing the translation for the specified number.

Last Call Return - Allows customer to dial the number of the latest incoming call, whether the call is answered or not.

Message Transfer Part (MTP) - SS7 protocol responsible for the reliable transport of signaling messages across the SS7 network. MTP includes level 1 of 56 or 64 kbs DS0 channels, a High Level Data Link Control (HDLC) based level 2, and level 3 routing based on the use of point codes which are assigned to each signaling point. MTP also includes procedures for change-over/change-back to enhance reliability.

Priority Call - Allows a customer to establish a list of special telephone numbers. A distinctive ring indicates an incoming call from this priority list.

Selective Call Acceptance - Enables a subscriber to selectively accept calls arriving from a limited set of previously identified directory numbers.

Selective Call Forwarding - Allows the customer to establish a special call forwarding list. When activated, only incoming calls from numbers on this list will forward.

## **SECTION 5. NETWORK SPECIFICATIONS**

The Common Channel Signaling Access Capability ("CCSAC") transmission specifications, diversity requirements and testing parameters are set forth in Technical References TR-TSV-000905, TR-TSV-000954 and Qwest Technical Reference PUB 77342, as amended from time to time.

## **SECTION 6. CCSAC ACCEPTANCE TESTING REQUIREMENTS**

Qwest will cooperatively test with CLEC, at the time of installation, network compatibility and other operational tests as described in Qwest Technical Reference PUB 77342. Successful completion and acceptance of all testing requirements must occur in order to receive CCSAC service.

## **SECTION 7. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## **SECTION 8. LIMITATION OF LIABILITY**

Under no circumstances shall either Party be liable to the other for any indirect, incidental, special, or consequential damages, including but not limited to, loss of business, loss of use, or loss of profits which arise in any way, in whole or in part, as a result of any action, error, mistake, or omission, whether or not negligence on the part of either Party occurs. One Party's liability to the other Party for direct, actual damages shall not exceed the amount required to correct the error, mistake, or omission under this Agreement.

## **SECTION 9. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim.

In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual

basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

#### **SECTION 10. CHOICE OF LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which services are provided.

#### **SECTION 11. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

#### **SECTION 12. SUCCESSORS, ASSIGNMENT**

Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

#### **SECTION 13. LAWFULNESS OF AGREEMENT**

This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is so terminated but the Parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

#### **SECTION 14. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written supplement to this Agreement amend, modify, or add to the provisions of this Agreement.

#### **SECTION 15. DEFAULT**

Either Party may terminate this Agreement if the other Party defaults by failing to perform any substantial obligation on its part. In the event of default, a Party shall have ten (10) days after written notice to correct such default. This Agreement may not be terminated as a result of default unless and until written notice detailing such default is given to the defaulting Party.

#### **SECTION 16. NOTICES**

All notices required by or relating to this Agreement shall be in writing and shall be sent to the Parties to this Agreement at their addresses set forth below, unless the same is changed from time to time, in which event each Party shall notify the other in writing of such change. All such notices shall be deemed duly given if mailed, postage prepaid, and directed to the addresses then prevailing. If any questions arise about dates of notices, postmark dates control.

**Adelphia Business Solutions, Inc.**  
John B. Glicksman, Esq.  
One North Main Street  
Coudersport, PA 16915  
(814) 274-6361

**Qwest Corporation**  
Director Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202

With a copy to:  
Joelle Blaho-Sinclair, Esq.  
121 Champion Way, 4<sup>th</sup> Floor  
Canonsburg, PA 15317  
(724) 743-9721

With a copy to:  
Corporate Counsel, Interconnection  
Attention: General Counsel  
1801 California Street, Suite 5100  
Denver, CO 80202

#### **SECTION 17. ENTIRE AGREEMENT**

This Agreement, together with all exhibits, attachments, notices, and any jointly-executed written supplements to this Agreement, constitutes the entire Agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

#### **SECTION 18. PUBLICITY**

Notwithstanding anything to the contrary, CLEC may not make any disclosure to any other person or any public announcement or press release regarding this Agreement or any relation between CLEC and Qwest, without the prior written consent of the Qwest Senior Vice-President of Corporate Communications. Qwest shall have the right to terminate this Agreement and any other agreements between the Parties if CLEC violates this provision.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

Adelphia Business Solutions, Inc.

*Operator* (C12)  
JSG

*John Glicksman*  
Signature

JOHN GLICKSMAN  
Printed Name  
GENERAL COUNSEL

\_\_\_\_\_  
Title

7-2-01  
Date

Qwest Corporation

*Cynthia Bell*  
Signature

Cynthia Bell  
Printed Name

*Sales Executive*  
Title

7-12-01  
Date

## OPERATOR SERVICES AGREEMENT

This Operator Services Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and Frontier Local Services Inc. ("Frontier"). This Agreement may refer to Frontier or to USWC as a Party ("Party") to this Agreement. The Operator Service(s) provided in this Agreement (the "Services") shall be delivered in the State of Arizona.

**WHEREAS**, Frontier desires to purchase and USWC desires to provide the Services as described and set forth in this Agreement.

**NOW THEREFORE**, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by USWC to Frontier. The Services shall be provided, in the sole discretion of USWC, by live operators, computers (machine), or otherwise, and includes the following:

1.1.1 Local Assistance - Provide assistance to Frontier's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with USWC's customary practice for providing customer assistance.

1.1.2 IntraLATA Toll Assistance - Provide assistance to Frontier's end user requesting help or information on placing or completing intraLATA toll calls. Nothing in this Agreement is intended to obligate USWC to provide any toll services to Frontier or Frontier's end users. USWC will direct Frontier's end user to contact their carrier to complete intraLATA toll calls. Subject to availability and capacity, access may be provided via operator services trunks purchased from USWC or provided by Frontier via collocation arrangements to route calls to Frontier's platform.

1.1.3 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of Frontier's end user, including, but not limited to, police, sheriff, highway patrol and fire. Frontier will be responsible for providing USWC with the appropriate emergency agencies numbers and updates.

1.1.4 Busy Line Verify ("BLV") - Performed when Frontier's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge shall apply.

1.1.5 Busy Line Interrupt ("BLI") - Performed when Frontier's end user requests

assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will only interrupt the busy line and will not connect Frontier's end user and the called party. The operator will make only one BLI attempt per end user call and the applicable charge applies whether or not the called party releases the line.

1.1.6 Quote Service - Provide time and charges to hotel/motel and other end users of Frontier for guest/account identification.

1.1.7 Coin Refund Requests - Provide information regarding Frontier's end users requesting coin refunds

1.2. If this Agreement arises out of an interconnection agreement or agreement for the resell of services between the Parties ("Interconnection Agreement"), then this Agreement shall be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, shall also end this Agreement.

## 2. TERMS AND CONDITIONS

- 2.1 Interconnection to USWC Services from an end office to USWC is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the USWC Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote USWC Operator Services switch.
- 2.2 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.
- 2.3 Operator Services interconnection will require an operator services type trunk between the end office and the interconnection point on the USWC switch.
- 2.4 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.
- 2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.
- 2.6 Each Party shall route BLV/BLI traffic inquiries over separate direct trunks (not the local/intraLATA trunks) established between the Parties' respective operator bureaus.

- 2.7 USWC will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users.
- 2.8 It is understood that USWC shall have no obligation to supply a Service where facilities or technical abilities are limited. USWC, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 Frontier will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and Frontier represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 USWC shall maintain adequate equipment and personnel to reasonably perform the Services. Frontier shall provide and maintain the facilities necessary to connect its end users to the place(s) where USWC provides the Services and to provide all information and data needed or reasonably requested by USWC in order to perform the Services.

### 3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Corporation Commission in the State of Arizona. This Agreement shall become effective upon the latest signature date, and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other.

### 4. CHARGES

- 4.1. The charges for the Services provided by USWC under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.
- 4.2. The charges listed in Exhibit A shall be subject to adjustment upon thirty (30) days prior written notice.

### 5. BILLING

- 5.1. USWC will track usage and bill Frontier, and Frontier will pay USWC for the calls placed by Frontier's end users and facilities.
- 5.2. Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and USWC will charge Frontier whichever is lower.
- 5.3. If, due to equipment malfunction or other error, USWC does not have available the necessary information to compile an accurate billing statement, USWC may render a reasonably estimated statement, but shall notify Frontier of the methods of such estimate and cooperate in good faith with Frontier to establish a fair, equitable estimate.

USWC shall render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.

- 5.4 Frontier alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and USWC is not liable or responsible for the collection of any such amounts.

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should Frontier dispute any portion of the statement under this Agreement, Frontier will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Frontier shall pay all amounts due. Both Frontier and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## 8. FORCE MAJEURE

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms;

earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

**9. LIMITATION OF LIABILITY**

USWC SHALL BE LIABLE TO FRONTIER, AND FRONTIER ONLY, FOR THE ACTS OR OMISSIONS OF USWC, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF USWC OR THOSE ATTRIBUTABLE TO USWC, IN CONNECTION WITH USWC'S SUPPLYING OR FRONTIER'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT USWC'S LIABILITY TO FRONTIER, AND FRONTIER'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO Frontier OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY FRONTIER TO USWC FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL USWC BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL USWC EVER BE LIABLE TO FRONTIER'S END USERS FOR ANY DAMAGES WHATSOEVER.

**10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, Frontier hereby indemnifies USWC from any claims made against it by a Frontier's end user on account of Frontier's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of USWC. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

**11. LAWFULNESS OF AGREEMENT**

- 11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency

with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to Frontier to that effect.

- 11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

**12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

**13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

**14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15. SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

Frontier Local Services Inc.  
Director - ALEC Facilities-Based Development  
180 South Clinton Avenue  
Rochester, NY 14646

USWC  
Director Interconnection Compliance  
1801 California, Room 2410  
Denver, Colorado 80202

Copy to:  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646  
Attn: Vice President and General Counsel  
Each Party shall inform the other of any changes in the above addresses.

Copy to:  
U S WEST Law Department  
General Counsel-Interconnection  
1801 California Street, Room 5100  
Denver, Colorado 80202

18. ENTIRE AGREEMENT

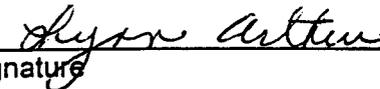
This Agreement, including all exhibits and properly executed amendments, is the entire Agreement between the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

Frontier Local Services Inc.

U S WEST Communications, Inc.

  
Signature

  
Signature

Laurie A. Larson  
Name Printed/Typed

Lynn Arthur  
Name Printed/Typed

GENERAL MANAGER - BUSINESS DEVELOPMENT  
Title

SR Account Manager  
Title

7/8/99  
Date

7-14-99  
Date

**EXHIBIT A  
CHARGES**

**Arizona**

**OPTION A: Price Per Message**

Operator Handled Calling Card	\$ 0.46	For each completed calling card call that was dialed 0+ where the operator entered the calling card number.
Machine Handled Call	\$ 0.18	For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.
Station Call	\$ 0.84	For each completed station call, including station sent paid, collect, 3rd number special billing or 0- calling card call.
Person Call	\$ 2.05	For each completed person-to-person call regardless of the billing used by the end user.
Connect to Directory Assistance	\$ 0.55	For each operator placed call to directory assistance.
Busy Line Verify	\$ 0.72	For each call where the operator determines that conversation exists on a line.
Busy Line Interrupt	\$ 0.87	For each call where the operator interrupts conversation on a busy line and requests release of the line.
Operator Assistance	\$ 0.36	For each local call completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator, and no attempt is made to complete a call; calls for quote service.

"Completed call" as used in this Agreement shall be conclusively determined to mean that "end user makes contact with the location, telephone number, person, or extension designated by the end user".

A completed call shall be computed, calculated and recorded in accordance with the methods and practices of USWC and the operating capacity and ability of USWC's measuring equipment.

**EXHIBIT A  
(Page 2)**

**CHARGES  
Arizona**

<b>OPTION B: Price Per Work Second and Computer Handled Calls</b>		
Operator Handled	\$ 0.0200	Per operator work second for all operator assisted Services and functions of Services.
Machine Handled	\$ 0.13	Per call for all Services which are handled solely by computers and USWC equipment.

Frontier is charged per work second for all calls originating from its end user(s) and facilities that go to USWC's operator facilities for handling. Work second charging begins when the USWC operator position connects with Frontier's end user and terminates when the connection between the USWC operator position and Frontier's end user is terminated.

Calls without live operator intervention are computer (machine) handled and include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

## OPERATOR SERVICES AGREEMENT

This Operator Services Agreement ("Agreement") is made and entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and Ionex Communications North, Inc. ("CLEC"), a South Dakota corporation. This Agreement may refer to CLEC or to Qwest as a Party ("Party") to this Agreement. The Operator Services provided in this Agreement (the "Services") will be delivered in the state of Arizona.

**WHEREAS**, CLEC desires to purchase and Qwest desires to provide the Services as described and set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by Qwest to CLEC. The Services will be provided by live operators or computers and include the following:

1.1.1 Local Assistance - Provide assistance to CLEC's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with Qwest's customary practice for providing customer assistance.

1.1.1.1 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of CLEC's end user, including, but not limited to, police, sheriff, highway patrol and fire. CLEC will be responsible for providing Qwest with the appropriate emergency agencies numbers and updates.

1.1.1.2 Busy Line Verify ("BLV") - Performed when CLEC's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge will apply.

1.1.1.3 Busy Line Interrupt ("BLI") - Performed when CLEC's end user requests assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will only interrupt the busy line and will not connect CLEC's end user and the called party. The operator will make only one BLI attempt per end user call and the applicable charge applies whether or not the called party releases the line.

1.1.1.4 Quote Service - Provide time and charges to hotel/motel and other end users of CLEC for guest/account identification.

1.1.1.5 Coin Refund Requests - Provide information regarding CLEC's end users requesting coin refunds

1.1.2 IntraLATA Toll Assistance - Qwest will direct CLEC's end user to contact their carrier to complete intraLATA toll calls.

1.1.3 Branding - Announces CLEC's name at the introduction and conclusion of the call, where technically feasible. Qwest will record the Brand.

1.2. If this Agreement arises out of an interconnection agreement between the Parties ("Interconnection Agreement"), then this Agreement will be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, will also end this Agreement.

## 2. TERMS AND CONDITIONS

2.1 CLEC elects to receive the following Operator Services:

Local Assistance	_____
Emergency Assistance	_____
Busy Line Verify	_____
Busy Line Interrupt	_____
Quote Service	_____
Coin Refund Requests	_____
IntraLATA Toll Assistance	_____
Branding	_____

2.2 Interconnection to Qwest Services from an end office to Qwest is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to Qwest's Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote Qwest Operator Services switch.

2.3 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.

2.4 Operator Services interconnection will require a dedicated operator services type trunk, per NPA, between the end office and the interconnection point on Qwest's switch. Subject to availability and capacity, access may be provided via operator services trunks purchased from Qwest or provided by CLEC via collocation arrangements to route calls to CLEC's platform.

2.5 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic

Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

- 2.6 CLEC will provide separate (not the local/intraLATA trunks) no-test trunks to Qwest's BLV-BLI validation hubs or to Qwest's operator services switches.
- 2.7 Qwest will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users. Nothing in this Agreement is intended to obligate Qwest to provide any toll services to CLEC or CLEC's end users.
- 2.8 It is understood that Qwest will have no obligation to supply a Service where facilities or technical abilities are limited. Qwest, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 CLEC will complete the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and CLEC represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 Qwest will maintain adequate equipment and personnel to reasonably perform the Services. CLEC will provide and maintain the facilities necessary to connect its end users to the place(s) where Qwest provides the Services and to provide all information and data needed or reasonably requested by Qwest in order to perform the Services.

### 3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Public Utilities Commission in the state of Arizona. This Agreement will become effective upon the latest signature date, and will terminate at the same time as the said Interconnection Agreement.

### 4. CHARGES

The charges for the Services provided by Qwest under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.

### 5. BILLING

- 5.1. Qwest will track usage and bill CLEC, and CLEC will pay Qwest for the calls placed by CLEC's end users and facilities.
- 5.2 Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and Qwest will charge CLEC whichever is lower.
- 5.3 If, due to equipment malfunction or other error, Qwest does not have available the necessary information to compile an accurate billing statement, Qwest may render a reasonably estimated statement, but will notify CLEC of the methods of such estimate

and cooperate in good faith with CLEC to establish a fair, equitable estimate. Qwest will render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.

- 5.4 CLEC alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and Qwest is not liable or responsible for the collection of any such amounts.
- 5.5 If Branding is selected, a non-recurring charge for studio set-up and recording will apply. The non-recurring studio/recording charge will be assessed each time the brand message is changed. The non-recurring charge to load the switches will be assessed each time there is any type of change to the switch. (CLECs offering service in more than one state will be assessed a one time only non-recurring charge for studio set-up and recording.) The non-recurring charge(s) must be paid prior to commencement of service.

Branding – Studio Set-up and Record Brand: (Includes both front-end and back-end Brand)	\$10,500.00
Branding – Load brand into Switch: (Per Switch)	\$175.00

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above will be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should CLEC dispute any portion of the statement under this Agreement, CLEC will notify Qwest in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. CLEC will pay all amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.

7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## **8. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## **9. LIMITATION OF LIABILITY**

QWEST SHALL BE LIABLE TO CLEC, AND CLEC ONLY, FOR THE ACTS OR OMISSIONS OF QWEST, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF QWEST OR THOSE ATTRIBUTABLE TO QWEST, IN CONNECTION WITH QWEST'S SUPPLYING OR CLEC'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT QWEST'S LIABILITY TO CLEC, AND CLEC'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO CLEC OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY CLEC TO QWEST FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL QWEST BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL QWEST EVER BE LIABLE TO CLEC'S END USERS FOR ANY DAMAGES WHATSOEVER.

## **10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, CLEC hereby indemnifies Qwest from any claims made against it by CLEC's end user's due to CLEC's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of Qwest. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall

promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

## **11. LAWFULNESS OF AGREEMENT**

- 11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to CLEC to that effect.
- 11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

## **12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

## **13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

## **14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

## **15. SUCCESSORS, ASSIGNMENT**

Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

Any notice to be given pursuant to this Agreement by either Party to the other shall be in writing and shall be deemed given when sent either by mail to the address listed below or by facsimile with a confirmation copy sent by mail.

**Ionex Communications North, Inc.**  
Sue E. Weiske  
General Counsel  
5710 LBJ Freeway, #215  
Dallas, TX 75240

**Qwest Corporation**  
Director-Interconnect  
1801 California Street, #2410  
Denver, Colorado 80202

**Copy to:**  
Qwest Legal Department  
General Counsel-Interconnection  
1801 California Street, Suite 3800  
Denver, Colorado 80202

**18. ENTIRE AGREEMENT**

This Agreement, together with any jointly-executed written amendments, constitutes the entire agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

**Ionex Communications North, Inc.**

**Qwest Corporation**

Sue E. Weiske

Elizabeth Stamp

Signature

Signature

Sue E. Weiske

Elizabeth Stamp

Name Printed/Typed

Name Printed/Typed

General Counsel

Account Executive

Title

Title

03-13-01

03/14/01

Date

Date

**EXHIBIT A  
CHARGES**

**Arizona**

<b>OPTION A: Price Per Message</b>		
Operator Handled Calling Card	\$ 0.46	For each completed calling card call that was dialed 0+ where the operator entered the calling card number.
Machine Handled Call	\$ 0.18	For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.
Station Call	\$ 0.84	For each completed station call, including station sent paid, collect, 3rd number special billing or 0- calling card call.
Person Call	\$ 2.05	For each completed person-to-person call regardless of the billing used by the end user.
Connect to Directory Assistance	\$ 0.55	For each operator placed call to directory assistance.
Busy Line Verify	\$ 0.72	For each call where the operator determines that conversation exists on a line.
Busy Line Interrupt	\$ 0.87	For each call where the operator interrupts conversation on a busy line and requests release of the line.
Operator Assistance	\$ 0.36	For each local call completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator, and no attempt is made to complete a call; calls for quote service.

"Completed call" as used in this Agreement shall be conclusively determined to mean that "end user makes contact with the location, telephone number, person, or extension designated by the end user".

A completed call shall be computed, calculated and recorded in accordance with the methods and practices of Qwest and the operating capacity and ability of Qwest's measuring equipment.

**EXHIBIT A  
(page 2)**

**CHARGES  
Arizona**

<b>OPTION B: Price Per Work Second and Computer Handled Calls</b>		
Operator Handled	\$ 0.0200	Per operator work second for all operator assisted Services and functions of Services.
Machine Handled	\$ 0.13	Per call for all Services which are handled solely by computers and Qwest equipment.

CLEC is charged per work second for all calls originating from its end user(s) and facilities that go to Qwest's operator facilities for handling. Work second charging begins when Qwest's operator position connects with CLEC's end user and terminates when the connection between Qwest's operator position and CLEC's end user is terminated.

Calls without live operator intervention are computer (machine) handled and include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

## DIRECTORY ASSISTANCE AGREEMENT

This Directory Assistance Agreement ("Agreement") is made and entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and Ionex Communications North, Inc. ("CLEC"), a South Dakota corporation. This Agreement may refer to CLEC or to Qwest as a Party ("Party") to this Agreement. The Directory Assistance service(s) provided in this Agreement (the "Services") will be delivered in the state of Arizona.

WHEREAS, Qwest desires to provide the Services as described herein.

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 The Directory Assistance service is a telephone number, voice information service that Qwest provides to other telecommunications carriers and its own end users. The published and non-listed telephone numbers provided within the relevant geographic area are only those contained in Qwest's current Directory Assistance database. Qwest offers the following five separate options:

1.1.1 Local Directory Assistance Service - Permits CLEC's end users to receive published and non-listed telephone numbers for their own NPA/LATA, whichever is greater.

1.1.2 National Directory Assistance Service - Permits CLEC's end users to receive listings for the entire United States database.

1.1.3 Branding - Permits CLEC's end users to receive the service options in 1.1.1 and 1.1.2 branded with the brand of CLEC, where technically feasible. Call Branding provides the announcement of CLEC's name to CLEC's end user during the introduction of the call, and at the completion of the call. Qwest will record the Brand.

1.1.4 Directory Assistance Call Completion Service - Permits CLEC's end users to connect to the requested local or intraLATA telephone number directly, where available, without having to dial another call, using Qwest's intraLATA toll network. Call Completion is not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.

1.1.5 Directory Assistance Call Completion Link Service - Permits CLEC's end user to connect to the requested interLATA telephone number directly, where available, without having to dial another call. Qwest will return the end user to CLEC for completion. Call Completion Link is not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.

**2. TERMS AND CONDITIONS**

2.1 CLEC elects to receive the following Directory Assistance service options:

- Local Directory Assistance \_\_\_\_\_
- National Directory Assistance \_\_\_\_\_
- Branding \_\_\_\_\_
- Directory Assistance Call Completion \_\_\_\_\_
- Directory Assistance Call Completion Link \_\_\_\_\_

2.2 CLEC will complete the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and CLEC represents that the information completed is true and correct to the best of its knowledge and belief.

2.3 Qwest's Directory Assistance database contains only those published and non-listed telephone numbers provided to Qwest by its own end users and other telecommunications carriers.

2.4 Qwest will provide access to the Services via dedicated multi-frequency (MF) operator service trunks purchased from Qwest or provided by CLEC. These operator service trunks will be connected directly to Qwest's Directory Assistance host switch or directly to a remote Directory Assistance switch via the trunk side. CLEC will be required to order or provide an operator service trunk for each NPA served.

2.5 Qwest will provide and maintain the equipment and personnel necessary to perform the Directory Assistance services specified in this Agreement. CLEC will provide and maintain the equipment, facilities, lines and materials necessary to connect its telecommunication facilities to an agreed upon Qwest's Operator Services switch.

**3. TERM AND TERMINATION**

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Public Utilities Commission in the state of Arizona. This Agreement will become effective upon latest signature date, and will terminate at the same time as the said Interconnection Agreement.

**4. RATE ELEMENTS**

4.1 The following per call rate is applicable for Local Directory Assistance service and National Directory Assistance service, where selected by CLEC.

Local Directory Assistance	\$0.28
National Directory Assistance	\$0.385

4.2 A non-recurring charge for studio set-up and recording will apply. The non-recurring studio/recording charge will be assessed each time the brand message is changed. The non-recurring charge to load the switches will be assessed each time there is any type of change to the switch. (CLECs offering service in more than one state will be

assessed a one time only non-recurring charge for studio set-up and recording.) The non-recurring charge(s) must be paid prior to commencement of Service.

Branding – Studio Set-up and Record Brand: (Includes both front-end and back-end Brand)	\$10,500.00
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Branding – Load brand into Switch: (Per Switch)	\$175.00
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- 4.3 A per call rate for Directory Assistance Call Completion and Directory Assistance Call Completion Link will be applicable. Additional charges for Qwest IntraLATA Toll services also apply for completed intraLATA toll calls. Additional charges for interLATA may apply from the interLATA toll carrier.

Directory Assistance Call Completion	\$.06
Directory Assistance Call Completion Link	\$.085

**5. BILLING**

- 5.1 Qwest will track and bill CLEC on a monthly basis for the number of calls placed to Qwest's Directory Assistance service by CLEC's end users. Qwest will also track and bill monthly the number of Call Completion requests.
- 5.2 For purposes of determining when CLEC is obligated to pay the per call rate, the call will be deemed made and CLEC will be obligated to pay when the call is answered. An end user may request and receive no more than two telephone numbers per Directory Assistance call. Qwest will not credit, rebate or waive the per call charge due to any failure to provide a telephone number, or due to any incorrect information.
- 5.3 CLEC alone and independently establishes all prices it charges its end users for the Directory Assistance and Call Completion Services provided by means of this Agreement.

**6. PAYMENT**

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above will be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should CLEC dispute any portion of the monthly billing under this Agreement, CLEC will notify Qwest in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. CLEC will pay all amounts due. Both CLEC and

Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## **8. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## **9. LIMITATION OF LIABILITY**

QWEST SHALL BE LIABLE TO CLEC, AND CLEC ONLY, FOR THE ACTS OR OMISSIONS OF QWEST, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF QWEST OR THOSE ATTRIBUTABLE TO QWEST, IN CONNECTION WITH QWEST'S SUPPLYING OR CLEC'S USING THE DIRECTORY ASSISTANCE SERVICE, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT QWEST'S LIABILITY TO CLEC, AND CLEC'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO CLEC OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY CLEC TO QWEST FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL QWEST BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL QWEST EVER BE LIABLE TO CLEC'S END USERS FOR ANY DAMAGES WHATSOEVER.

this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15. SUCCESSORS, ASSIGNMENT**

Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

Any notice to be given pursuant to this Agreement by either Party to the other shall be in writing and shall be deemed given when sent either by mail to the address listed below or by facsimile with a confirmation copy sent by mail.

**Ionex Communications North, Inc.**  
Sue E. Weiske  
General Counsel  
5710 LBJ Freeway, #215  
Dallas, TX 75240

**Qwest Corporation**  
Director – Interconnect  
1801 California Street, #2410  
Denver, Colorado 80202

**Copy to:**  
Qwest Legal Department  
General Counsel - Interconnection  
1801 California Street, #3800  
Denver, Colorado 80202

**18. ENTIRE AGREEMENT**

This Agreement, together with any jointly-executed written amendments, constitutes the entire agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

**Ionex Communications North, Inc.**

Sue E. Weiske  
Signature

Sue E. Weiske  
Name Printed/Typed

General Counsel  
Title

03-13-01  
Date

**Qwest Corporation**

Elizabeth Stamp  
Signature

Elizabeth Stamp  
Name Printed/Typed

Account Executive  
Title

03/14/01  
Date

## TRANSIENT INTERIM SIGNALING CAPABILITY SERVICE AGREEMENT

This Transient Interim Signaling Capability Service Agreement (hereinafter "Agreement"), is entered into between U S WEST Communications, Inc., a Colorado corporation, (hereinafter referred to as "USWC"), and U S WEST Wireless, L.L.C. ("USWW"). The service described in this Agreement shall be performed in the State of Arizona.

**WHEREAS**, USWW desires to purchase USWC's Transient Interim Signaling Capability Service, in conjunction with already purchased Common Channel Signaling Access Capability ("CCSAC") Link Service, and USWC wishes to provide Transient Interim Signaling Capability Service to USWW, thereby transporting Transient Interim Signaling Capability messages from USWW to USWC's Signaling Transfer Point, which is then transported to USWW's designated interconnecting POP/SPOI, under terms and conditions prescribed in the Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, USWC and USWW agree as follows:

### SECTION 1. DEFINITIONS

- A. **A-Link (Access Link)** A diverse pair of facilities connecting local end office switching centers with USWC Signaling Transfer Points (STPs).
- B. **IAM (Initial Address Message)** The SS7 ISUP message which initiates set up of all circuit-switched voice and data calls, both ISDN and non-ISDN. The IAM carries called party number (CPN) bearer capability, user-to-user information, etc.
- C. **ISUP (ISDN User Part)** An SS7 protocol that defines the messages, parameters and procedures to set up and tear down all circuit-switched telephone calls, both ISDN and non-ISDN, in SS7 networks. It includes support for ISDN Supplementary Voice services and interworks with Q.931/932 to provide end-to-end ISDN.
- D. **SCP (Service Control Point)** is a control point in an SS7 network.
- E. **SP (Service Point)** The SS7 network interface elements capable of initiating and/or terminating SS7 messages. SPs may be end offices, access tandem switches, operator service systems or database managers, or other SPs.
- F. **SSP (Service Switching Point)** The software capability within an SP, and the SSP provides the SP with the SS7 message preparation/interpretation capability, plus SS7 transmission/reception access ability.
- G. **STP (Signaling Transfer Point)** The point where USWW interconnects with USWC's SS7 network. In order to connect to USWC's SS7 network, USWW or other third party initiating USWW's queries must connect with a USWC STP in order to connect to USWC's SCP.
- H. **TCAP (Transaction Capabilities Transfer Part)** Is the SS7 application layer protocol used for the exchange of non-circuit control related information between application

processes operating in different network nodes, for example switch to SCP.

- I. **Transient Interim Signaling Capability Service** is USWC's service which routes and switches SS7 call set up messages through USWC local STPs for the setup and tear down of associated USWW's voice/data circuits for which USWC does not do the provisioning of the voice circuit. In addition, Transient Interim Signaling Capability Service also allows USWW to purchase local STP SS7 signaling, switching and routing for querying a non-USWC database, if such database is available to USWC.
- J. **TSQ (Trunk Signaling Quantity)** The total number of estimated USWW trunks that the USWC SS7 Network will be required to equip with signaling.

## **SECTION 2. DESCRIPTION**

- A. Under this Agreement, USWC will provide USWW with Transient Interim Signaling Capability service as described in Section 1 above.
- B. The Transient Interim Signaling Capability service originates at a USWW's Signaling Point of Interface (SPOI) within a given LATA, traverse USWW's CCSAC links, which is routed and switched by USWC local STPs to another designated set of third party CCSAC links, which in turn is terminated at a USWW SPOI within the same LATA.
- C. During the term of this Agreement, USWC will allow USWW to send Transient Interim Signaling Capability signaling messages to USWC's local STP, where USWW has an established interconnection point.

## **SECTION 3. TERM OF AGREEMENT**

- A. This Agreement shall become effective April 13, 1998 ("Effective Date"), and shall continue in full force and effect unless canceled by either party, for its convenience, with sixty (60) days written notice.
- B. Should USWW terminate this Agreement at any time during the first two (2) months after the Effective Date, USWW agrees to pay USWC a termination charge equal to two (2) times the monthly rate.
- C. Notwithstanding anything to the contrary in this Agreement, if legal or regulatory decisions or rules compel USWC or USWW to terminate the Agreement, USWC and USWW shall have no liability to the other in connection with such termination.

## **SECTION 4. RESPONSIBILITIES OF THE PARTIES**

- A. USWC will transport Transient Interim Signaling Capability signaling messages to the network information point designated in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference.
- B. USWW warrants that it shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol identified in Exhibit B to this Agreement, which is attached hereto and incorporated herein by this reference.

USWW acknowledges that transmission in said protocol is necessary for USWC to provision its Transient Interim Signaling Capability Services. USWW will adhere to other applicable standards, which include Bellcore specifications defining service applications, message types and formats. USWC 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 USWW.

- C. USWW acknowledges and agrees that SS7 network overload, due to extraordinary volumes of queries and/or other SS7 network messages, may have a detrimental effect on the performance of each party's SS7 network. USWW further agrees that USWC, in its sole discretion, shall employ certain automatic and/or manual overload controls within USWC's SS7 network to safeguard against any detrimental effects. USWC shall report to USWW any instances where overload controls are invoked due to USWW's SS7 network, and USWW agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.
- D. USWW agrees to comply, at its own expense, with the provision of all state, local and federal laws, regulations, ordinances, requirements and codes which are applicable to the performance of the services hereunder which include the satisfaction of all tax and other governmentally imposed responsibilities as a co-provider, including, but not limited to, payment of federal, state, or local sales, use, excise, or other taxes or tax-like fees, imposed on or with respect to USWC's Transient Interim Signaling Capability (hereinafter referred to as "Tax(es)"), including Taxes imposed directly on USWC and relating to USWW's (or USWW's subscriber) services. USWW shall, where permissible by law, file returns or reports relating to such Taxes, and pay or remit all such Taxes and other items to the appropriate taxing authority.
- E. USWC shall provide to USWW, where technically available, accurate and complete Transient Interim Signaling Capability service.
- F. USWW shall provide to USWC accurate and complete Transient Interim Signaling Capability service billing information, on the anniversary date of the Effective Date of this Agreement.

#### **SECTION 5. PROVISION OF TRANSIENT INTERIM SIGNALING CAPABILITY**

- A. USWC Transient Interim Signaling Capability shall be provided in accordance with the terms and conditions of this Agreement.
- B. If at any time during the term of this Agreement a tariff for the fully unbundled SS7 signaling service becomes effective, the tariff and all terms and conditions, including all rates, will supersede this Agreement.

#### **SECTION 6. CHARGES AND PAYMENT**

- A. USWW agrees to pay USWC for Transient Interim Signaling Capability service, at rate(s) established in Exhibit C to this Agreement, which is attached hereto and incorporated herein by this referenced.

- B. Transient Interim Signaling Capability will be billed to USWW on a monthly basis by USWC. If payment is not received within thirty (30) days of the bill date, USWW agrees to pay a late charge of one and one half per cent (1 1/2%) per month, or the maximum percentage allowed by law, whichever is lower, on the unpaid balance.

#### **SECTION 7. LIMITATION OF LIABILITY**

Under no circumstances shall either party be liable to the other for any indirect, incidental, special, or consequential damages, including but not limited to, loss of business, loss of use, or loss of profits which arise in any way, in whole or in part, as a result of any action, error, mistake, or omission, whether or not negligence on the part of either party occurs. Any USWC liability to USWW for any damages of any kind under this Agreement, regardless of the form of action, shall be the amount of direct damages, which shall in no event exceed the monthly recurring charge specified in Exhibit C. In no event shall USWC have any liability for system outage or inaccessibility, or for losses arising from the authorized use of the Transient Interim Signaling Capability service.

#### **SECTION 8. INDEMNIFICATION**

USWW has an affirmative duty to file end user tariffs with the applicable state commissions limiting its liability associated with the performance of service to its customers. To the extent not prohibited by law, each party shall indemnify and hold harmless the other party, its officers, agents and employees from and against any loss, cost, claim, actions, damages or expense (including attorney fees), brought by a person not a party under this Agreement which relates to or arises out of the negligent or intentional acts, errors or omissions of the indemnifying party in connection with action or inaction under this Agreement. Notwithstanding the foregoing, it is understood that USWC shall not be liable under any theory whatsoever to USWW's end users on account of any errors, omissions, deficiencies, or defects in the service provided pursuant to this Agreement, and USWW shall indemnify USWC against any loss, cost, claim, actions, damages or expense (including attorney fees) brought by a customer of USWW.

#### **SECTION 9. LAWFULNESS OF AGREEMENT**

This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency and regulatory orders. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement to the extent it is unlawful, shall terminate.

#### **SECTION 10. FORCE MAJEURE**

Neither party shall be held responsible for any delay in performance or failure to perform under this Agreement if such delay is caused by fires, strikes or other labor disputes, embargoes, explosion, power blackout, war, civil disturbance, governmental requirements, acts of God, or other causes beyond its control rendering performance impossible or commercially impracticable.

## **SECTION 11. DISPUTE RESOLUTION**

Other than those claims over which a regulatory agency has exclusive jurisdiction, all disputes between the parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction. Federal law, not state law, shall govern the arbitrability of all claims.

## **SECTION 12. NOTICES**

All notices required by or relating to this Agreement shall be in writing and shall be sent to the Parties to this Agreement at their addresses set forth below, unless the same is changed from time to time, in which event each party shall notify the other in writing of such change. All such notices shall be deemed duly given if mailed, postage prepaid, and directed to the addresses then prevailing. If any questions arise about dates of notices, postmark dates control.

### **U S WEST Wireless, L.L.C.**

Joe Hannan  
Director-Ntwk Plng & Eng-Wireless  
12121 Grand Street  
Thornton, CO 80241

### **U S WEST Communications, Inc.**

Pam Anderson  
Account Manager  
250 Bell Plaza, Room 1050  
Salt Lake City, UT 84111

## **SECTION 13. ASSIGNMENT**

USWW may not assign this Agreement to a third party without the prior written consent of USWC. A change in control, defined as a change in a party's controlling interest, whether by acquisition of voting stock, receipt of profits or otherwise, shall be deemed an assignment.

## **SECTION 14. NON-WAIVER**

No course of dealing or failure of a party to enforce strictly any term, right, obligation or provision of this Agreement or to exercise any option provided hereunder shall be construed as a waiver of such provision.

## **SECTION 15. GOVERNING LAW**

This Agreement and the obligations of the parties hereunder shall be construed and governed in accordance with the laws of the state in which services are provided under this Agreement.

## **SECTION 16. ENTIRE AGREEMENT**

This Agreement contains the entire expression of the parties' bargain. No other documents or communications may be relied upon in interpreting this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the last date written below.

U S WEST Wireless, L.L.C

Joseph P. H

SIGNATURE

Dir. Network Planning & Engr

TITLE

12/3/98

DATE

U S WEST Communications, Inc.

Kanda J Anderson

SIGNATURE

Sr. Acct Mgr.

TITLE

12/16/98

DATE

**Exhibit A**  
**USWW IDENTIFIED NETWORK INFORMATION:**

**Drawing:**

Drawing provided by USWW is attached.



**EXHIBIT B  
NETWORK INFORMATION  
SPECIFICATIONS AND STANDARDS:**

<b>Issuing Organization</b>		<b>Document Number</b>
A.	Bellcore-SS7 Specification	TR-NPL-000246
B.	ANSI-SS7 Specifications <ul style="list-style-type: none"> <li>• Message Transfer Part</li> <li>• Signaling Connection Control Part</li> <li>• Transaction Capabilities Application Part</li> </ul>	T1.111 T1.112 T1.114
C.	Bellcore-CCS Network Interface Specifications	TR-TSV-000905

**EXHIBIT C  
CHARGES AND LOCATIONS  
FLAT RATE BILLING:**

A. USWW agrees to pay USWC for Transient Interim Signaling Capability Service on a Flat Rate basis, at the following locations, as follows:

1. **Non-Recurring Charge**

Point Code Activation (Nine Point Codes per Order)	Number of Point Codes	
Per Order, the first Point Code is \$165.00; each additional Point Code, up to eight, is \$9.50	3	\$184.00
Calculation for Point Code Order: \$165.00 + (8 x \$9.50)		

2. **Monthly Recurring Charge \*\***

3 Locations @ \$250.00 each	\$750.00
** Minimum Monthly Charge \$250.00 per Location	
** Maximum Monthly Charge \$500.00 per Location	

3. **LOCATION OF POINT CODES**  
ECP = Executive Call Processor  
SN = Service Node

<u>LOCATION</u>	<u>POINT CODE</u>	<u>CLLI CODE</u>
(1) Phoenix - ECP	248-060-010	PHNXAZNECM1
(1) Phoenix - SN	248-060-011	PHNXAZNED10
(1) Tucson - ECP	248-060-013	TCSNAZMACM1

## OPERATOR SERVICES AGREEMENT

This Operator Services Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and OnePoint Communications, LLC ("OnePoint"). This Agreement may refer to OnePoint or to USWC as a Party ("Party") to this Agreement. The Operator Service(s) provided in this Agreement (the "Services") shall be delivered in the state of Arizona.

**WHEREAS**, OnePoint desires to purchase and USWC desires to provide the Services as described and set forth in this Agreement.

**NOW THEREFORE**, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by USWC to OnePoint. The Services will be provided by live operators or computers and include the following:

1.1.1 Local Assistance - Provide assistance to OnePoint's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with USWC's customary practice for providing customer assistance.

1.1.1.1 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of OnePoint's end user, including, but not limited to, police, sheriff, highway patrol and fire. OnePoint will be responsible for providing USWC with the appropriate emergency agencies numbers and updates.

1.1.1.2 Busy Line Verify ("BLV") - Performed when OnePoint's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge shall apply.

1.1.1.3 Busy Line Interrupt ("BLI") - Performed when OnePoint's end user requests assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will only interrupt the busy line and will not connect OnePoint's end user and the called party. The operator will make only one BLI attempt per

end user call and the applicable charge applies whether or not the called party releases the line.

1.1.1.4 Quote Service - Provide time and charges to hotel/motel and other end users of OnePoint for guest/account identification.

1.1.1.5 Coin Refund Requests - Provide information regarding OnePoint's end users requesting coin refunds

1.1.2 IntraLATA Toll Assistance - Provide assistance to OnePoint's end user requesting help or information on placing or completing intraLATA toll calls. Nothing in this Agreement is intended to obligate USWC to provide any toll services to OnePoint or OnePoint's end users. USWC will direct OnePoint's end user to contact their carrier to complete intraLATA toll calls. Subject to availability and capacity, access may be provided via operator services trunks purchased from USWC or provided by OnePoint via collocation arrangements to route calls to OnePoint's platform.

1.1.3 Call Branding Service - Announces OnePoint's name at the introduction and conclusion of the call, where technically feasible. USWC will record the Brand.

1.2. If this Agreement arises out of an interconnection agreement between the Parties ("Interconnection Agreement"), then this Agreement shall be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, shall also end this Agreement.

## 2. TERMS AND CONDITIONS

2.1 Interconnection to USWC Services from an end office to USWC is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the USWC Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote USWC Operator Services switch.

2.2 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.

2.3 Operator Services interconnection will require a separate operator services type trunk, per NPA, between the end office and the interconnection point on the USWC switch.

2.4 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

- 2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.
- 2.6 Each Party shall route BLV/BLI traffic inquiries over separate direct trunks (not the local/intraLATA trunks) established between the Parties' respective operator bureaus.
- 2.7 USWC will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users.
- 2.8 It is understood that USWC shall have no obligation to supply a Service where facilities or technical abilities are limited. USWC, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 OnePoint will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and OnePoint represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 USWC shall maintain adequate equipment and personnel to reasonably perform the Services. OnePoint shall provide and maintain the facilities necessary to connect its end users to the place(s) where USWC provides the Services and to provide all information and data needed or reasonably requested by USWC in order to perform the Services.

### **3. TERM AND TERMINATION**

This Agreement arises out of an Interconnection Agreement between the Parties which has been submitted for approval to the Corporation Commission in the state of Arizona. This Agreement shall become effective upon Commission approval of the Wireline Agreement, and shall terminate at the same time as the said Interconnection Agreement.

### **4. CHARGES**

The charges for the Services provided by USWC under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.

### **5. BILLING**

- 5.1. USWC will track usage and bill OnePoint, and OnePoint will pay USWC for the calls placed by OnePoint's end users and facilities.
- 5.2 Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and USWC will charge OnePoint whichever is lower.

- 5.3 If, due to equipment malfunction or other error, USWC does not have available the necessary information to compile an accurate billing statement, USWC may render a reasonably estimated statement, but shall notify OnePoint of the methods of such estimate and cooperate in good faith with OnePoint to establish a fair, equitable estimate. USWC shall render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.
- 5.4 OnePoint alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and USWC is not liable or responsible for the collection of any such amounts.
- 5.5 If Call Branding is selected, a non-recurring set up and recording fee, to establish or change the recording, will be applicable for establishing the Call Branding option. The non-recurring charge(s) must be paid prior to commencement of the service.

Call Branding	\$7,120.00
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## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should OnePoint dispute any portion of the statement under this Agreement, OnePoint will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. OnePoint shall pay all amounts due. Both OnePoint and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. *Disputed amount on 9/27*

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly

seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

**8. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

**9. LIMITATION OF LIABILITY**

USWC SHALL BE LIABLE TO ONEPOINT, AND ONEPOINT ONLY, FOR THE ACTS OR OMISSIONS OF USWC, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF USWC OR THOSE ATTRIBUTABLE TO USWC, IN CONNECTION WITH USWC'S SUPPLYING OR ONEPOINT'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT USWC'S LIABILITY TO ONEPOINT, AND ONEPOINT'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO ONEPOINT OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY ONEPOINT TO USWC FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL USWC BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL USWC EVER BE LIABLE TO ONEPOINT'S END USERS FOR ANY DAMAGES WHATSOEVER.

**10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, OnePoint hereby indemnifies USWC from any claims made against it by a OnePoint's end user on account of OnePoint's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of USWC. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

**11.   LAWFULNESS OF AGREEMENT**

11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to OnePoint to that effect.

11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

**12.   GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

**13.   DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

**14.   DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15.   SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

**16.   AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

17. NOTICES

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

OnePoint Communications, LLC  
Gary Moulton  
Director – Network Administration  
5335 Wisconsin Avenue, N.W.  
Suite 810  
Washington, DC 20015  
Phone: 202-895-258

USWC  
Director - Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202

Copy to:

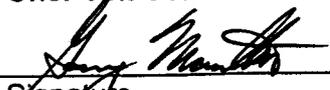
U S WEST Law Department  
General Counsel - Interconnection  
1801 California Street, Suite 5100  
Denver, CO 80202

18. ENTIRE AGREEMENT

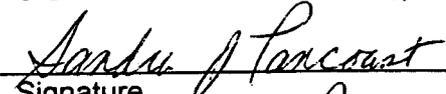
This Agreement, including all exhibits and properly executed amendments, is the entire Agreement between the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

OnePoint Communications, LLC

  
\_\_\_\_\_  
Signature  
Gary Moulton  
\_\_\_\_\_  
Name Printed/Typed  
Director – Network Administration  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date 9/27/99

U S WEST Communications, Inc.

  
\_\_\_\_\_  
Signature  
SANDRA J PANCOAST  
\_\_\_\_\_  
Name Printed/Typed  
ACCOUNT MANAGER  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date 10/4/99

**EXHIBIT A  
CHARGES**

**Arizona**

<b>OPTION A: Price Per Message</b>		
Operator Handled Calling Card	\$ 0.46	For each completed calling card call that was dialed 0+ where the operator entered the calling card number.
Machine Handled Call	\$ 0.18	For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.
Station Call	\$ 0.84	For each completed station call, including station sent paid, collect, 3rd number special billing or 0- calling card call.
Person Call	\$ 2.05	For each completed person-to-person call regardless of the billing used by the end user.
Connect to Directory Assistance	\$ 0.55	For each operator placed call to directory assistance.
Busy Line Verify	\$ 0.72	For each call where the operator determines that conversation exists on a line.
Busy Line Interrupt	\$ 0.87	For each call where the operator interrupts conversation on a busy line and requests release of the line.
Operator Assistance	\$ 0.36	For each local call completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator, and no attempt is made to complete a call; calls for quote service.

"Completed call" as used in this Agreement shall be conclusively determined to mean that "end user makes contact with the location, telephone number, person, or extension designated by the end user".

A completed call shall be computed, calculated and recorded in accordance with the methods and practices of USWC and the operating capacity and ability of USWC's measuring equipment.

**EXHIBIT A  
(page 2)**

**CHARGES  
Arizona**

<b>OPTION B: Price Per Work Second and Computer Handled Calls</b>		
Operator Handled	\$ 0.0200	Per operator work second for all operator assisted Services and functions of Services.
Machine Handled	\$ 0.13	Per call for all Services which are handled solely by computers and USWC equipment.

OnePoint is charged per work second for all calls originating from its end user(s) and facilities that go to USWC's operator facilities for handling. Work second charging begins when the USWC operator position connects with OnePoint's end user and terminates when the connection between the USWC operator position and OnePoint's end user is terminated.

Calls without live operator intervention are computer (machine) handled and include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

## OPERATOR SERVICES AGREEMENT

This Operator Services Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and OnePoint Communications, LLC ("OnePoint"). This Agreement may refer to OnePoint or to USWC as a Party ("Party") to this Agreement. The Operator Service(s) provided in this Agreement (the "Services") shall be delivered in the state of Arizona.

**WHEREAS**, OnePoint desires to purchase and USWC desires to provide the Services as described and set forth in this Agreement.

**NOW THEREFORE**, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by USWC to OnePoint. The Services will be provided by live operators or computers and include the following:

1.1.1 Local Assistance - Provide assistance to OnePoint's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with USWC's customary practice for providing customer assistance.

1.1.1.1 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of OnePoint's end user, including, but not limited to, police, sheriff, highway patrol and fire. OnePoint will be responsible for providing USWC with the appropriate emergency agencies numbers and updates.

1.1.1.2 Busy Line Verify ("BLV") - Performed when OnePoint's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge shall apply.

1.1.1.3 Busy Line Interrupt ("BLI") - Performed when OnePoint's end user requests assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will only interrupt the busy line and will not connect OnePoint's end user and the called party. The operator will make only one BLI attempt per

end user call and the applicable charge applies whether or not the called party releases the line.

1.1.1.4 Quote Service - Provide time and charges to hotel/motel and other end users of OnePoint for guest/account identification.

1.1.1.5 Coin Refund Requests - Provide information regarding OnePoint's end users requesting coin refunds

1.1.2 IntraLATA Toll Assistance - Provide assistance to OnePoint's end user requesting help or information on placing or completing intraLATA toll calls. Nothing in this Agreement is intended to obligate USWC to provide any toll services to OnePoint or OnePoint's end users. USWC will direct OnePoint's end user to contact their carrier to complete intraLATA toll calls. Subject to availability and capacity, access may be provided via operator services trunks purchased from USWC or provided by OnePoint via collocation arrangements to route calls to OnePoint's platform.

1.1.3 Call Branding Service - Announces OnePoint's name at the introduction and conclusion of the call, where technically feasible. USWC will record the Brand.

1.2. If this Agreement arises out of an interconnection agreement between the Parties ("Interconnection Agreement"), then this Agreement shall be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, shall also end this Agreement.

## 2. TERMS AND CONDITIONS

2.1 Interconnection to USWC Services from an end office to USWC is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the USWC Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote USWC Operator Services switch.

2.2 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.

2.3 Operator Services interconnection will require a separate operator services type trunk, per NPA, between the end office and the interconnection point on the USWC switch.

2.4 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

- 2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.
- 2.6 Each Party shall route BLV/BLI traffic inquiries over separate direct trunks (not the local/intraLATA trunks) established between the Parties' respective operator bureaus.
- 2.7 USWC will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users.
- 2.8 It is understood that USWC shall have no obligation to supply a Service where facilities or technical abilities are limited. USWC, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 OnePoint will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and OnePoint represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 USWC shall maintain adequate equipment and personnel to reasonably perform the Services. OnePoint shall provide and maintain the facilities necessary to connect its end users to the place(s) where USWC provides the Services and to provide all information and data needed or reasonably requested by USWC in order to perform the Services.

### 3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties which has been submitted for approval to the Corporation Commission in the state of Arizona. This Agreement shall become effective upon Commission approval of the Wireline Agreement, and shall terminate at the same time as the said Interconnection Agreement.

### 4. CHARGES

The charges for the Services provided by USWC under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.

### 5. BILLING

- 5.1 USWC will track usage and bill OnePoint, and OnePoint will pay USWC for the calls placed by OnePoint's end users and facilities.
- 5.2 Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and USWC will charge OnePoint whichever is lower.

- 5.3 If, due to equipment malfunction or other error, USWC does not have available the necessary information to compile an accurate billing statement, USWC may render a reasonably estimated statement, but shall notify OnePoint of the methods of such estimate and cooperate in good faith with OnePoint to establish a fair, equitable estimate. USWC shall render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.
- 5.4 OnePoint alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and USWC is not liable or responsible for the collection of any such amounts.
- 5.5 If Call Branding is selected, a non-recurring set up and recording fee, to establish or change the recording, will be applicable for establishing the Call Branding option. The non-recurring charge(s) must be paid prior to commencement of the service.

Call Branding	\$7,120.00
---------------	------------

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should OnePoint dispute any portion of the statement under this Agreement, OnePoint will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. OnePoint shall pay all ~~amounts due~~ amounts due. Both OnePoint and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. *Dispute UNDISPUTED on 9/27*

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly

seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

**8. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

**9. LIMITATION OF LIABILITY**

USWC SHALL BE LIABLE TO ONEPOINT, AND ONEPOINT ONLY, FOR THE ACTS OR OMISSIONS OF USWC, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF USWC OR THOSE ATTRIBUTABLE TO USWC, IN CONNECTION WITH USWC'S SUPPLYING OR ONEPOINT'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT USWC'S LIABILITY TO ONEPOINT, AND ONEPOINT'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO ONEPOINT OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY ONEPOINT TO USWC FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL USWC BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL USWC EVER BE LIABLE TO ONEPOINT'S END USERS FOR ANY DAMAGES WHATSOEVER.

**10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, OnePoint hereby indemnifies USWC from any claims made against it by a OnePoint's end user on account of OnePoint's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of USWC. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

## **11. LAWFULNESS OF AGREEMENT**

- 11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to OnePoint to that effect.
- 11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

## **12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

## **13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

## **14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

## **15. SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

## **16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

17. NOTICES

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

OnePoint Communications, LLC  
Gary Moulton  
Director – Network Administration  
5335 Wisconsin Avenue, N.W.  
Suite 810  
Washington, DC 20015  
Phone: 202-895-258

USWC  
Director - Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202

Copy to:

U S WEST Law Department  
General Counsel - Interconnection  
1801 California Street, Suite 5100  
Denver, CO 80202

18. ENTIRE AGREEMENT

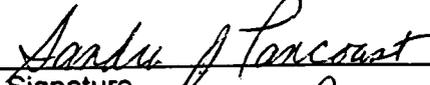
This Agreement, including all exhibits and properly executed amendments, is the entire Agreement between the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

OnePoint Communications, LLC

  
\_\_\_\_\_  
Signature  
Gary Moulton  
\_\_\_\_\_  
Name Printed/Typed  
Director – Network Administration  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date 9/27/99

U S WEST Communications, Inc.

  
\_\_\_\_\_  
Signature  
SANDRA J PANCOAST  
\_\_\_\_\_  
Name Printed/Typed  
ACCOUNT MANAGER  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date 10/4/99

**EXHIBIT A  
CHARGES**

**Arizona**

<b>OPTION A: Price Per Message</b>		
Operator Handled Calling Card	\$ 0.46	For each completed calling card call that was dialed 0+ where the operator entered the calling card number.
Machine Handled Call	\$ 0.18	For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.
Station Call	\$ 0.84	For each completed station call, including station sent paid, collect, 3rd number special billing or 0- calling card call.
Person Call	\$ 2.05	For each completed person-to-person call regardless of the billing used by the end user.
Connect to Directory Assistance	\$ 0.55	For each operator placed call to directory assistance.
Busy Line Verify	\$ 0.72	For each call where the operator determines that conversation exists on a line.
Busy Line Interrupt	\$ 0.87	For each call where the operator interrupts conversation on a busy line and requests release of the line.
Operator Assistance	\$ 0.36	For each local call completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator, and no attempt is made to complete a call; calls for quote service.

"Completed call" as used in this Agreement shall be conclusively determined to mean that "end user makes contact with the location, telephone number, person, or extension designated by the end user".

A completed call shall be computed, calculated and recorded in accordance with the methods and practices of USWC and the operating capacity and ability of USWC's measuring equipment.

**EXHIBIT A**  
**(page 2)**

**CHARGES**  
**Arizona**

<b>OPTION B: Price Per Work Second and Computer Handled Calls</b>		
Operator Handled	\$ 0.0200	Per operator work second for all operator assisted Services and functions of Services.
Machine Handled	\$ 0.13	Per call for all Services which are handled solely by computers and USWC equipment.

OnePoint is charged per work second for all calls originating from its end user(s) and facilities that go to USWC's operator facilities for handling. Work second charging begins when the USWC operator position connects with OnePoint's end user and terminates when the connection between the USWC operator position and OnePoint's end user is terminated.

Calls without live operator intervention are computer (machine) handled and include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

## DIRECTORY ASSISTANCE AGREEMENT

This Directory Assistance Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and OnePoint Communications, LLC ("OnePoint"). This Agreement may refer to OnePoint or to USWC as a Party ("Party") to this Agreement. The Directory Assistance service(s) provided in this Agreement (the "Services") shall be delivered in the state of Arizona.

WHEREAS, USWC desires to provide the Services as described herein.

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 The Directory Assistance service is a telephone number, voice information service that USWC provides to other telecommunications carriers and its own end users. The published and non-listed telephone numbers provided within the relevant geographic area are only those contained in USWC's current Directory Assistance database. USWC offers the following five separate options:

1.1.1 Local Directory Assistance service - permits OnePoint's end users to receive published and non-listed telephone numbers for their own NPA/LATA, whichever is greater.

1.1.2 National Directory Assistance service - permits OnePoint's end users to receive listings for the entire United States database.

1.1.3 Call Branding service - permits OnePoint's end users to receive the service options in 1.1.1 and 1.1.2 branded with the brand of OnePoint, where technically feasible. Call Branding provides the announcement of OnePoint's name to OnePoint's end user during the introduction of the call, and at the completion of the call. USWC will record the Brand.

1.1.4 Directory Assistance Call Completion service - permits OnePoint's end users to connect to the requested local or intraLATA telephone number directly, where available, without having to dial another call, using the USWC intraLATA toll network. Call Completion is not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.

1.1.5 Directory Assistance Call Completion Link service - permits OnePoint's end user to connect to the requested interLATA telephone number directly, where available, without having to dial another call. USWC will return the end user to OnePoint for completion by the end user's selected interexchange carrier. (USWC is restricted from completing interLATA calls.) Call Completion Link is

not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.

## 2. TERMS AND CONDITIONS

2.1 OnePoint hereby elects to receive the following Directory Assistance service options:

Local Directory Assistance Service	✓
National Directory Assistance Service	✓
Call Branding	✓
Directory Assistance Call Completion	✓
Directory Assistance Call Completion Link	✓

2.2 OnePoint will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and OnePoint represents that the information completed is true and correct to the best of its knowledge and belief.

2.3 USWC's Directory Assistance database contains only those published and non-listed telephone numbers provided to USWC by its own end users and other telecommunications carriers.

2.4 USWC will provide access to the Services via dedicated multi-frequency (MF) operator service trunks purchased from USWC or provided by OnePoint. These operator service trunks will be connected directly to USWC's Directory Assistance host switch or directly to a remote Directory Assistance switch via the trunk side. OnePoint will be required to order or provide an operator service trunk for each NPA served.

2.5 USWC shall provide and maintain the equipment and personnel necessary to perform the Directory Assistance services specified in this Agreement. OnePoint shall provide and maintain the equipment, facilities, lines and materials necessary to connect its telecommunication facilities to an agreed upon USWC's Operator Services switch.

## 3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties which has been submitted for approval to the Corporation Commission in the state of Arizona. This Agreement shall become effective upon Commission approval of the Wireline Agreement, and shall terminate at the same time as the said Interconnection Agreement.

## 4. RATE ELEMENTS

4.1 The following per call rate is applicable for Local Directory Assistance service and National Directory Assistance service, where selected by OnePoint.

Local Directory Assistance	\$0.34
National Directory Assistance	\$0.385

- 4.2 A non-recurring set up and recording fee, to establish or change the recording, will be applicable for establishing the Call Branding option. The non-recurring charge(s) must be paid prior to commencement of the service.

Call Branding	\$7,120.00
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- 4.3 A per call rate for Directory Assistance Call Completion and Directory Assistance Call Completion Link will be applicable. Additional charges for USWC IntraLATA Toll services also apply for completed intraLATA toll calls. Additional charges for interLATA may apply from the interLATA toll carrier.

Directory Assistance Call Completion	\$.06
Directory Assistance Call Completion Link	\$.06

**5. BILLING**

- 5.1 USWC will track and bill OnePoint on a monthly basis for the number of calls placed to USWC's Directory Assistance service by OnePoint's end users. USWC will also track and bill monthly the number of Call Completion requests.
- 5.2 For purposes of determining when OnePoint is obligated to pay the per call rate, the call shall be deemed made and OnePoint shall be obligated to pay when the call is answered. An end user may request and receive no more than two telephone numbers per Directory Assistance call. USWC will not credit, rebate or waive the per call charge due to any failure to provide a telephone number, or due to any incorrect information.
- 5.3 OnePoint alone and independently establishes all prices it charges its end users for the Directory Assistance and Call Completion Services provided by means of this Agreement.

**6. PAYMENT**

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should OnePoint dispute any portion of the monthly billing under this Agreement, OnePoint will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. OnePoint shall pay all amounts due. Both OnePoint and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

*UNDISPUTED 9/27/99*

## **10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. OnePoint is indemnifying USWC from any claim made against it by a OnePoint end user on account of OnePoint's end user's use or attempted use of the Directory Assistance service. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorneys' fees.

## **11. LAWFULNESS OF AGREEMENT**

- 11.1 This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to OnePoint to that effect.
- 11.2 If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

## **12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which the Directory Assistance service is delivered to the end user.

## **13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

## **14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate

this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15. SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

**OnePoint Communications, LLC**  
Gary Moulton  
Director – Network Administration  
5335 Wisconsin Avenue, NW  
Suite 810  
Washington, DC 200015  
Phone: 202-895-2528

**USWC**  
Director - Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202

**Copy to:**  
U S WEST Law Department  
General Counsel - Interconnection  
1801 California Street, Suite 5100  
Denver, CO 80202

**18. ENTIRE AGREEMENT**

This Agreement, together with any jointly-executed written amendments, constitutes the entire agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

OnePoint Communications, LLC

*Gary Moulton*  
Signature

Gary Moulton  
Name Printed/Typed

Director - Network Administration  
Title

9/27/99  
Date

U S WEST Communications, Inc.

*Sandra J Pancoast*  
Signature

SANDRA J PANCOAST  
Name Printed/Typed

ACCOUNT Manager  
Title

10/4/99  
Date

## OPERATOR SERVICES AGREEMENT

This Operator Services Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and Winstar Wireless of Arizona, Inc. ("Winstar"). This Agreement may refer to Winstar or to USWC as a Party ("Party") to this Agreement. The Operator Service(s) provided in this Agreement (the "Services") shall be delivered in the state of Arizona.

WHEREAS, Winstar desires to purchase and USWC desires to provide the Services as described and set forth in this Agreement.

NOW THEREFORE, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by USWC to Winstar. The Services shall be provided, in the sole discretion of USWC, by live operators, computers (machine), or otherwise, and includes the following:

1.1.1 Local Assistance - Provide assistance to Winstar's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with USWC's customary practice for providing customer assistance.

1.1.2 IntraLATA Toll Assistance - Provide assistance to Winstar's end user requesting help or information on placing or completing intraLATA toll calls. Nothing in this Agreement is intended to obligate USWC to provide any toll services to Winstar or Winstar's end users. USWC will direct Winstar's end user to contact their carrier to complete intraLATA toll calls. Subject to availability and capacity, access may be provided via operator services trunks purchased from USWC or provided by Winstar via collocation arrangements to route calls to Winstar's platform.

1.1.3 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of Winstar's end user, including, but not limited to, police, sheriff, highway patrol and fire. Winstar will be responsible for providing USWC with the appropriate emergency agencies numbers and updates.

1.1.4 Busy Line Verify ("BLV") - Performed when Winstar's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge shall apply.

1.1.5 Busy Line Interrupt ("BLI") - Performed when Winstar's end user requests assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called

party that there is a call waiting. The operator will only interrupt the busy line and will not connect Winstar's end user and the called party. The operator will make only one BLI attempt per end user call and the applicable charge applies whether or not the called party releases the line.

1.1.6 Quote Service - Provide time and charges to hotel/motel and other end users of Winstar for guest/account identification.

1.1.7 Coin Refund Requests - Provide information regarding Winstar's end users requesting coin refunds

1.2. If this Agreement arises out of an interconnection agreement or agreement for the resell of services between the Parties ("Interconnection Agreement"), then this Agreement shall be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, shall also end this Agreement.

## 2. TERMS AND CONDITIONS

- 2.1 Interconnection to USWC Services from an end office to USWC is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the USWC Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote USWC Operator Services switch.
- 2.2 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.
- 2.3 Operator Services interconnection will require an operator services type trunk between the end office and the interconnection point on the USWC switch.
- 2.4 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.
- 2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.
- 2.6 Each Party shall route BLV/BLI traffic inquiries over separate direct trunks (not the local/intraLATA trunks) established between the Parties' respective operator bureaus.
- 2.7 USWC will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users.

- 2.8 It is understood that USWC shall have no obligation to supply a Service where facilities or technical abilities are limited. USWC, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 Winstar will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and Winstar represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 USWC shall maintain adequate equipment and personnel to reasonably perform the Services. Winstar shall provide and maintain the facilities necessary to connect its end users to the place(s) where USWC provides the Services and to provide all information and data needed or reasonably requested by USWC in order to perform the Services.

### **3. TERM AND TERMINATION**

This Agreement shall be effective upon execution and delivery by the Parties (or any required approval), and it shall terminate at the same time as the said Interconnection Agreement referred to in Section 1.2 above. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other. If USWC continues to provide and Winstar continues to purchase Services upon the expiration of this Agreement, such activity will be governed by the terms of this Agreement at USWC's then-current rates, including either Party's ability to terminate this Agreement, in whole or in part, on thirty (30) days notice.

### **4. CHARGES**

- 4.1. The charges for the Services provided by USWC under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.
- 4.2. The charges listed in Exhibit A shall be subject to adjustment upon thirty (30) days prior written notice.

### **5. BILLING**

- 5.1. USWC will track usage and bill Winstar, and Winstar will pay USWC for the calls placed by Winstar's end users and facilities.
- 5.2. Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and USWC will charge Winstar whichever is lower.
- 5.3. If, due to equipment malfunction or other error, USWC does not have available the necessary information to compile an accurate billing statement, USWC may render a reasonably estimated statement, but shall notify Winstar of the methods of such estimate and cooperate in good faith with Winstar to establish a fair, equitable estimate. USWC shall render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.

- 5.4 Winstar alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and USWC is not liable or responsible for the collection of any such amounts.

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should Winstar dispute any portion of the statement under this Agreement, Winstar will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Winstar shall pay all amounts due. Both Winstar and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## 8. FORCE MAJEURE

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

**9. LIMITATION OF LIABILITY**

USWC SHALL BE LIABLE TO WINSTAR, AND WINSTAR ONLY, FOR THE ACTS OR OMISSIONS OF USWC, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF USWC OR THOSE ATTRIBUTABLE TO USWC, IN CONNECTION WITH USWC'S SUPPLYING OR WINSTAR'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT USWC'S LIABILITY TO WINSTAR, AND WINSTAR'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO WINSTAR OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY WINSTAR TO USWC FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL USWC BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL USWC EVER BE LIABLE TO WINSTAR'S END USERS FOR ANY DAMAGES WHATSOEVER.

**10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, Winstar hereby indemnifies USWC from any claims made against it by a Winstar's end user on account of Winstar's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of USWC. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

**11. LAWFULNESS OF AGREEMENT**

11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to Winstar to that effect:

11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

**12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

**13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

**14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15. SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

**Winstar**  
Robert Berger  
1146 Nineteenth Street NW, Suite 250  
Washington, DC 20036

**USWC**  
Director Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, Colorado 80202

**Copy to:**  
U S WEST Law Department  
General Counsel-Interconnection  
1801 California, Suite 5100  
Denver, Colorado 80202

18. ENTIRE AGREEMENT

This Agreement, including all exhibits and properly executed amendments, is the entire Agreement between the Parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

Winstar Wireless of Arizona, Inc.

U S WEST Communications, Inc.

*Robert B. Berger*  
Signature

*Dodie Osborn*  
Signature

Robert B. Berger  
Name Printed/Typed

Dodie Osborn  
Name Printed/Typed

*Sr VP, Regulatory/Legal*  
Title

Senior Account Manager  
Title

*2/24/99*  
Date

*2/26/99*  
Date

**EXHIBIT A  
CHARGES**

**Arizona**

<b>OPTION A: Price Per Message</b>		
Operator Handled Calling Card	\$ 0.46	For each completed calling card call that was dialed 0+ where the operator entered the calling card number.
Machine Handled Call	\$ 0.18	For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.
Station Call	\$ 0.84	For each completed station call, including station sent paid, collect, 3rd number special billing or 0- calling card call.
Person Call	\$ 2.05	For each completed person-to-person call regardless of the billing used by the end user.
Connect to Directory Assistance	\$ 0.55	For each operator placed call to directory assistance.
Busy Line Verify	\$ 0.72	For each call where the operator determines that conversation exists on a line.
Busy Line Interrupt	\$ 0.87	For each call where the operator interrupts conversation on a busy line and requests release of the line.
Operator Assistance	\$ 0.36	For each local call completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator, and no attempt is made to complete a call; calls for quote service.

"Completed call" as used in this Agreement shall be conclusively determined to mean that "end user makes contact with the location, telephone number, person, or extension designated by the end user".

A completed call shall be computed, calculated and recorded in accordance with the methods and practices of USWC and the operating capacity and ability of USWC's measuring equipment.

**EXHIBIT A  
(page 2)**

**CHARGES  
Arizona**

<b>OPTION B: Price Per Work Second and Computer Handled Calls</b>		
Operator Handled	\$ 0.0200	Per operator work second for all operator assisted Services and functions of Services.
Machine Handled	\$ 0.13	Per call for all Services which are handled solely by computers and USWC equipment.

Winstar is charged per work second for all calls originating from its end user(s) and facilities that go to USWC's operator facilities for handling. Work second charging begins when the USWC operator position connects with Winstar's end user and terminates when the connection between the USWC operator position and Winstar's end user is terminated.

Calls without live operator intervention are computer (machine) handled and include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.