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Lead Paralegal

May 23, 2008

Cheryl Walker  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: New ARB

Dear Ms. Walker:

Enclosed for filing in a new ARB matter please find an original and two (2) copies of Qwest Corporation's Petition for Approval of TRO/TRRO Amendment with Hunter Construction, Inc. dba Hunter Communications, and dba Core Digital Services, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler

CMB:

Enclosure

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of May, 2008, I served the foregoing **QWEST CORPORATION'S PETITION FOR APPROVAL OF TRO/TRRO AMENDMENT WITH HUNTER CONSTRUCTION, INC. DBA HUNTER COMMUNICATIONS AND DBA CORE DIGITAL SERVICES** on the following person via U.S. Mail, by mailing a correct copy to him in a sealed envelope, with postage prepaid, addressed to him at his office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Richard W. Ryan  
Hunter Construction, Inc.  
    dba Hunter Communications and  
    dba Core Digital Services Hunter, Inc.  
801 Enterprise Drive  
Central Point, OR 97502

DATED this 23<sup>rd</sup> day of May, 2008.

**QWEST CORPORATION**



By: \_\_\_\_\_

ALEX M. DUARTE, No. 30836  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
Telephone: 503-242-5623  
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Attorney for Qwest Corporation

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB \_\_\_\_**

In the Matter of QWEST CORPORATION Petition for Approval of Interconnection Rates, Terms, Conditions, and Related Arrangements with HUNTER CONSTRUCTION, INC. DBA HUNTER COMMUNICATIONS AND DBA CORE DIGITAL SERVICES pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996	PETITION FOR APPROVAL OF TRO/TRRO AMENDMENT WITH HUNTER CONSTRUCTION, INC. DBA HUNTER COMMUNICATIONS AND DBA CORE DIGITAL SERVICES
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Pursuant to section 252(b) of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the “Act”), and OAR 860-016-0000 *et seq.*, Qwest Corporation (“Qwest”) petitions the Public Utility Commission of Oregon (the “Commission”) for approval of the terms, conditions, and prices for interconnection and related arrangements with Hunter Construction, Inc. dba Hunter Communications and dba Core Digital Services Hunter, Inc. (“Hunter”). Specifically, Qwest requests that the Commission adopt Qwest’s proposed amendment to the interconnection agreement (“ICA”) between Hunter and Qwest. The proposed amendment that Qwest seeks approval for pertains to the Federal Communications Commission’s (“FCC’s”) *Triennial Review Order* (“TRO”) and the *Triennial Review Remand Order* (“TRRO”) (hereafter, “TRO/TRRO Amendment”). The proposed TRO/TRRO Amendment is attached hereto as Exhibit 1 and incorporated herein by reference.

The pertinent information for this petition as follows:

## BACKGROUND

### **A. Contact Information**

The names and titles of the persons to whom requests for information and correspondence should be addressed on behalf of Qwest in this proceeding are:

Alex M. Duarte, OSB No. 02045  
Qwest  
421 SW Oak Street, Room 810  
Portland, Oregon 97204  
503-242-5623  
503-242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Don Mason  
Qwest  
421 SW Oak Street, Room 810  
Portland, Oregon 97204  
503-242-7454  
503-242-8589 (facsimile)  
[Don.Mason@qwest.com](mailto:Don.Mason@qwest.com)

On information and belief, the name and title of the person to whom requests for information and correspondence should be addressed on behalf of Hunter in this proceeding, and the Hunter contact person for the negotiations with Qwest, is:

Richard W. Ryan  
Hunter Construction, Inc.  
dba Hunter Communications and  
dba Core Digital Services Hunter, Inc.  
801 Enterprise Dr.  
Central Point, OR 97502  
541-772-9282, Ext. 2111  
[rryan@coreds.net](mailto:rryan@coreds.net)

### **B. The Parties**

The legal name of Petitioner is Qwest Corporation. Qwest is duly organized and validly existing as a corporation pursuant to the laws of the State of Colorado. Qwest has its principal place of business in Denver, Colorado. Qwest is a telecommunications utility with authority to provide, among other things, switched and private line local exchange service in 64 exchanges in Oregon. Qwest also has authority to provide switched and private line interexchange, and intraLATA and interLATA telecommunications service statewide. Qwest is an incumbent local exchange carrier (“ILEC”) in Oregon within the meaning of Section 251(h) of the Act. Qwest is

also a “Bell Operating Company” or “BOC,” as that term is defined in Section 153(35) of the Act. 47 U.S.C. § 153(35). The TRO/TRRO Amendment at issue applies only to services, products and facilities to be provided within the geographical areas in which Qwest is the ILEC in Oregon.

On information and belief, respondent Hunter is a wireline competitive local exchange carrier or “competitive provider” with its principal place of business in Central Point, Oregon. On information and belief, Hunter is authorized by this Commission to offer wireline competitive telecommunications services in Oregon.

**C. The Parties’ Current Interconnection Agreement**

Hunter currently has an interconnection agreement with Qwest that this Commission approved on September 29, 2003 in Order No. 03-582 in docket ARB 497. The current Hunter interconnection agreement has an original expiration date of September 29, 2006, but the agreement has “evergreen language,” and thus has continued on a month-to-month basis.

**D. Jurisdiction**

Qwest seeks approval of the TRO/TRRO Amendment with Hunter attached hereto as Exhibit 1, consistent with the requirements of the Telecommunications Act of 1996 (“the Act”), and more specifically, section 252(b) of the Act. 47 USC § 252(b).

As required by Section 252(b)(2)(B) of the Act, Qwest has delivered a copy of this Petition, together with all exhibits, to the authorized representative of Hunter, Richard W. Ryan.

This Commission has jurisdiction to arbitrate and approve this TRO/TRRO Amendment with Hunter pursuant to Section 251(b)(1) of the Act and OAR 860-016-0030.

**E. Documentation regarding Compliance with the Act**

**1. Section 252 procedures**

The procedures for negotiating, arbitrating and approving interconnection agreements and

amendments between ILECs and CLECs are set forth in section 252 of the Act. 47 U.S.C. § 252. Section 252(a)(1) establishes that an ILEC and a requesting telecommunications carrier may negotiate an interconnection agreement upon “a request for interconnection, services, or network elements pursuant to section 251.” Pursuant to section 252(b)(1), either the ILEC or the requesting carrier may petition a state commission to arbitrate any open issues from the 135th to the 160th day (inclusive) after the date on which a request for negotiations is received.

This Petition is timely filed, as Qwest initiated negotiations on December 18, 2007. A copy of Qwest’s December 18, 2007 letter request to negotiate the TRO/TRRO Amendment is attached as Exhibit 2. Thus, the 160th day after Qwest started negotiations is May 26, 2008.

Pursuant to Section 252(b)(4)(C) of the Act, this proceeding is to be concluded not later than nine months after the applicable request for negotiations was sent on December 18, 2007 to Hunter, which for purposes of this petition is September 18, 2008.

**2. Hunter’s failure to negotiate in good faith or to respond**

After Qwest initiated negotiations on December 18, 2007, Hunter has failed to respond at all, despite various requests by Qwest. See Exhibits 2-6. Hunter’s failure to respond to Qwest’s invitations to negotiate a TRO/TRRO Amendment is a failure to negotiate in good faith under the federal Act, and Division 16 of Chapter 860 of the Commission’s Oregon Administrative Rules, and has forced Qwest to seek approval of the TRO/TRRO Amendment attached as Exhibit 1 as the preferable alternative to discontinuing services relating to termination of traffic to Hunter.

Specifically, Hunter did not respond to Qwest’s initial request for negotiations, so Qwest sent a second letter request for negotiations on February 1, 2008. A copy of this second request letter is attached as Exhibit 3.

Hunter did not respond to Qwest’s second notice, so Qwest sent a third request for

negotiations on February 28, 2008, via email, and a fourth request on April 2, 2008, again via email. A copy of the emails with Qwest's third and fourth requests is attached as Exhibit 4.

When Qwest did not hear from Hunter again, Qwest sent a fifth request on April 28, 2008. A copy of this fifth request is attached as Exhibit 5. Hunter again failed to respond.

Finally, in a last ditch effort to avoid a needless proceeding, Qwest emailed Hunter one last time on Friday, May 16, 2008, and attached a draft petition and advised Hunter that Qwest intended to file the petition with the Commission this week, and thus asked Hunter to advise Qwest by Monday, May 19, 2008 whether it would enter into the Amendment. A copy of this sixth and final request is attached as Exhibit 6. When Hunter did not respond once again, Qwest called Hunter's principal Richard Ryan and left a voicemail message on Tuesday, May 20, 2008, but once again, Hunter failed to respond or return Qwest's telephone call.

Given the history of requests to Hunter, and its obvious and utter failures to respond to Qwest or to comply with its negotiation duties, it is apparent that Hunter has breached its duty to negotiate in good faith pursuant to section 252 (b)(5) of the Act.

#### **STATEMENT OF UNRESOLVED ISSUES AND PARTIES' POSITIONS**

Pursuant to 47 USC § 252(a)(2)(A) and OAR 860-016-0030(2)(a) and (b), a petition for arbitration or approval of an interconnection agreement or amendment is ordinarily required to contain a statement of all unresolved issues and a description of each party's position on the unresolved issues. That is demonstrably impossible in this case, because Hunter has seen fit to ignore multiple Qwest requests to negotiate.

In this case, apart from Hunter's failure to respond to Qwest's repeated invitations for negotiation, there are no unresolved issues, precisely because of Hunter's failure to negotiate in good faith, or even at all. Thus, Qwest is not aware of any disputes or unresolved issues with respect to the proposed TRO/TRRO Amendment.

## **REQUEST FOR APPROVAL WITHOUT DISPUTED ISSUES**

Hunter has been a CLEC competing with other carriers by offering services in its service territory, and has been exchanging its toll and EAS CLEC traffic with Qwest for a significant period of time, without entering into a TRO/TRRO Amendment that complies with the FCC's *TRO* and *TRRO*. Section 252 of the Act and 47 CFR § 51.301(b) both impose on Hunter a duty to negotiate in good faith in response to the several requests for negotiation described above. Hunter's failure to respond during the negotiation window violates this duty.

Because of the Hunter's violation of its duty to negotiate in good faith, Qwest asks that Hunter be barred from raising any disputed issues in response to this Petition. If Hunter is allowed to raise disputes now, the statutory duty to negotiate in good faith would be rendered meaningless, and any waiver of that duty would allow Hunter to subvert the entire scheme for negotiation and arbitration set up in the Act.

Thus, Qwest requests that the Commission approve the TRO/TRRO Amendment attached as Exhibit 1 as an amendment to the current interconnection agreement between Qwest and Hunter, as written, without changes or disputed issues.

While Qwest asks that Hunter be barred from raising any disputed issues in response to this Petition, Qwest asks the Commission to review the TRO/TRRO Amendment under section 252 of the Act to ensure that the TRO/TRRO Amendment attached as Exhibit 1 meets the requirements of section 251 of the Act, including the regulations prescribed by the FCC pursuant to section 251 and the *TRO* and *TRRO* themselves, or any other requirements within the Commission's state law authority that are consistent with the Act and FCC regulations, as permitted under section 252(e)(3) of the Act.

Qwest submits that Exhibit 1 fully complies with sections 251 and 252 of the Act, applicable state laws and the orders of this Commission. Exhibit 1 is the standard TRO/TRRO



Amendment that Qwest uses to initiate negotiations, and has been adopted in many cases with minor or no changes. Exhibit 1 has been reviewed and approved by regulatory commissions throughout Qwest's 14-state RBOC territory. The TRO/TRRO Amendment is not discriminatory, and is consistent with the public interest, convenience, and necessity.

**WHEREFORE**, Qwest respectfully requests that this Commission:

1. Conduct a proceeding pursuant to Section 252(b) and OAR 860-016-0030;
2. Bar Hunter from raising disputed issues in this proceeding as a consequence of its failure to negotiate in good faith as required by the Act;
3. Find that Qwest's proposed TRO/TRRO Amendment attached as Exhibit 1 is consistent with applicable law and commercially reasonable;
4. Issue an Order adopting and approving the proposed TRO/TRRO Amendment attached in Exhibit 1 as an amendment to the current interconnection agreement between Qwest and Hunter; and
5. Grant Qwest such other and further relief as may be necessary.

Dated: May 23, 2008

Respectfully submitted,

QWEST CORPORATION



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Attorney for Qwest Corporation

**Triennial Review Order and Triennial Review Remand Order  
("TRO/TRRO") Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
Hunter Construction Inc. dba Hunter Communications dba Core Digital Services  
for the State of  
Oregon**

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

**RECITALS.**

WHEREAS, Qwest and CLEC entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the state of Oregon which was approved by the Oregon Public Utility Commission ("Commission"), on September 29, 2003, as referenced in Order No. 03-582, ARB 497 ; and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its Report and Order *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, (effective October 2, 2003) ("TRO"); and

WHEREAS, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act; and

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

WHEREAS, the Parties do not believe CLEC has any facilities impacted by the Decisions but wish to amend the Agreement to comply with the Decisions and hereby agree to do so under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **I. Amendment Terms.**

To the extent applicable, the Agreement is hereby amended by deleting certain UNEs or by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 and Exhibit A to this Amendment, attached hereto and incorporated herein by this reference.

## **II. Limitations.**

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Decisions, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decisions should be changed, vacated, dismissed, stayed or modified.

## **III. Conflicts.**

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

## **IV. Scope.**

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the execution date.

## **V. Effective Date.**

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

## **VI. Further Amendments.**

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**VII. Entire Agreement.**

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Hunter Construction Inc.  
dba Hunter Communications  
dba Core Digital Services**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

L.T. Christensen  
\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

Director- Interconnection Agreements  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Table of Contents**

RECITALS.....	1
TABLE OF CONTENTS .....	<u>44</u>
1.0 DEFINITIONS.....	<u>55</u>
2.0 UNBUNDLED NETWORK ELEMENTS (UNE) GENERAL.....	<u>77</u>
3.0 UNBUNDLED LOOP.....	<u>1344</u>
4.0 UNBUNDLED DEDICATED INTEROFFICE TRANSPORT (UDIT).....	<u>1824</u>
5.0 UNBUNDLED LOCAL SWITCHING.....	<u>1925</u>
6.0 UNBUNDLED NETWORK ELEMENT COMBINATIONS.....	<u>1928</u>
6.3 COMMINGLING .....	<u>2234</u>
7.0 RATCHETING .....	<u>2332</u>
8.0 ROUTINE NETWORK MODIFICATIONS.....	<u>2433</u>

## 1.0 Definitions

"Business Line" means a Qwest-owned switched access line used to serve a business customer, whether by Qwest itself or by CLEC that leases the line from Qwest. The number of Business Lines in a Wire Center shall equal the sum of all Qwest business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Qwest end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

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

"Commingle" means the act of Commingling.

"Dark Fiber" is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

"Dedicated Transport" is Qwest transmission facilities between wire centers or switches owned by Qwest, or between wire centers or switches owned by Qwest and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

"Fiber-based Collocator" means any carrier, unaffiliated with Qwest, that maintains a Collocation arrangement in a Qwest Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Qwest Wire Center premises; and (3) is owned by a party other than Qwest or any affiliate of Qwest, except as set forth in this paragraph. Dark fiber obtained from Qwest on an indefeasible right of use basis shall be treated as non-Qwest fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this paragraph, the term "affiliate" is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

"Interexchange Service" means telecommunications service between stations in different exchange areas. *Cf. Modification of Final Judgment, § IV(K), reprinted in United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 229 (D.D.C. 1982)* (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Long Distance Service" (see "Interexchange Service").

"Mobile Wireless Service" means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the service offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

"Non-impaired Wire Center" – A Non-impaired Wire Center is a Wire Center that meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops and §51.319(a)(5)(i) for DS3 Loops. Non-impaired Wire Centers also include Tier 1 and Tier 2 Wire Centers as defined in §51.319(e)(3) and subject to the limitations of §51.319(e)(2)(ii)(A) for DS1 Dedicated Transport, §51.319(e)(2)(iii)(A) for DS3 Dedicated Transport and §51.319(e)(2)(iv)(A) for Dark Fiber Transport.

"Route" is a transmission path between one of Qwest's Wire Centers or switches and another of Qwest's Wire Centers or Switches. A Route between two (2) points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch "X"). Transmission paths between identical end points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

"Triennial Review Remand Order" The Triennial Review Remand Order is the FCC's Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005).

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

"Wire center" A wire center is the location of a Qwest local Switching facility containing one or more central offices, as defined in the Appendix to part 36 of Chapter I to Title 47 of the Code of Federal Regulations. The wire center boundaries define the area in which all customers served by a given wire center are located.

"Tier 1 Wire Centers" means those Qwest Wire Centers that contain at least four Fiber-based Collocators, at least 38,000 Business Lines, or both. Tier 1 Wire Centers also are those Qwest tandem Switching locations that have no line-side Switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

"Tier 2 Wire Centers" means those Qwest Wire Centers that are not Tier 1 Wire Centers, but contain at least 3 Fiber-based Collocators, at least 24,000 Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

"Tier 3 Wire Centers" means those Qwest Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

## **2.0 Unbundled Network Elements (UNE) General**

2.1 CLEC's Interconnection Agreement may include terms and conditions for certain Network Elements that Qwest is no longer required to offer on an unbundled basis pursuant to Section 251 of the Act. The FCC determined in its Decisions, that certain Unbundled Network Elements no longer satisfy the FCC's impairment test, and as a result, Qwest is no longer obligated to offer to CLEC those Network Elements on an unbundled basis pursuant to Section 251 of the Act. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution date of this Amendment, CLEC shall not order, and Qwest will not provide, the following Network Elements on an unbundled basis pursuant to Section 251 of the Act:

### **2.2.1 Unbundled Loops**

- a) Certain DS1 Loops subject to the requirements of Section 3.0 following
- b) Certain DS3 Loops subject to the requirements of Section 3.0 following
- c) OCn Loops
- d) FTTH & FTTC Loops subject to the requirements of Section 3.1.6 following
- e) Dark Fiber Loops subject to the requirements of Section 3.1.5 following
- f) Hybrid Loops (non-copper distribution Loops) except as identified in Section 3.1.7 following
- g) Line Sharing
- h) Feeder-Sub-Loop
- i) Shared Distribution Loops

### **2.2.2 Transport**

- a) E-UDIT (Extended Unbundled Dedicated Interoffice Transport); Transport from a CLEC's Premises to a Qwest Wire Center;
- b) E-UDF (Extended Unbundled Dark Fiber); Transport from a CLEC's Premises to a Qwest Wire Center;
- c) OCn UDIT; including Remote Node/Remote Port and SONET add/drop multiplexing
- d) UDIT and UDF as a part of a Meet-Point arrangement;
- e) Certain DS1 Transport (UDIT) subject to the requirements of Section 4.0



following

- f) Certain DS3 Transport (UDIT) subject to the requirements of Section 4.0 following
- g) Certain Dark Fiber Transport (UDF-IOF) subject to the requirements of Section 4.1.7 following
- h) Multiplexing associated with UDIT and Loop/Mux Combo

### **2.2.3 Unbundled Switching**

- a) Packet Switching
- b) Tandem Switching
- c) Mass Market Switching, including UNE-P and related services as identified in Section 2.2.3.1
- d) Enterprise Local Switching, including UNE-P and related services as identified in Section 2.2.3.1
- e) Signaling Networks (stand alone)

#### **2.2.3.1 Related services**

- a) Customized Routing
- b) Signaling
- c) AIN Database Services
- d) Line Information Database (LIDB)
- e) 8XX Database Services
- f) InterNetwork Calling Name (ICNAM)
- g) Local Number Portability (LNP) Database
- h) Shared Transport

### **2.2.4 Transition**

2.2.4.1 As of the effective date of this amendment the Parties believe that CLEC does not have any of the UNEs described above. However, If the Parties agree or it is determined through Dispute resolution that CLEC was not entitled to unbundled access to UNE described above, CLEC will place an order within thirty (30) Days to either disconnect the UNE or convert such UNE to an alternative service arrangement. The CLEC will be back billed pursuant to the results of Decisions in a non-discriminatory manner.

## **2.3 Intentionally Left Blank**

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

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

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

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

2.8 To submit an order to obtain a high-capacity loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 3.1.1 and 3.1.2, and that a requested unbundled DS1, DS3 or dark fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Sections 4.1.1, 4.1.2 and 4.1.7.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.

2.8.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-impairment thresholds referred to in Section 2.8. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in CLEC's Interconnection Agreement.

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2.8.4 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent

CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.

## **2.9 Service Eligibility Criteria**

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

2.9.1.1 Except as otherwise provided in this Section 2.9.1, Qwest shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

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

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

2.9.1.2.2 Per Circuit Criteria. The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

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

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

over that circuit.

**2.9.1.2.5 Collocation.**

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

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

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

2.9.1.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Where CLEC does not arrange for a meaningful exchange of traffic, those arrangements cannot be attributed towards satisfaction of this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA as the End User Customer served by the circuit. For each twenty-four (24) DS1 circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA as the End User Customer served by the circuit.

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

2.9.1.2.7 End Office Switch. Each circuit to be provided to each End

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

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

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

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

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

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

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

2.9.1.5.4 An independent auditor must perform its evaluation in accordance with the standards established by the American Institute for

Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

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

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

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

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

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

2.9.1.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits to Private Line/Special Access circuits and CLEC must true-up any difference in payments within thirty (30) days.

### **3.0 Unbundled Loop**

3.1 Unbundled Loops are available pursuant to CLEC's Agreement and the following terms and conditions.

**3.1.1 DS1 Unbundled Loops.** Subject to the cap described in Section 3.1.1.1, Qwest shall provide CLEC with non-discriminatory access to a DS1 loop on an unbundled basis to any building not served by a Wire Center with at least 60,000 Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that Wire Center.

**3.1.1.1 Cap on Unbundled DS1 Loop Circuits.** CLEC may obtain a

maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

**3.1.2 DS3 Unbundled Loops.** Subject to the cap described in Section 3.1.2.1, Qwest shall provide CLEC with non-discriminatory access to a DS3 loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

**3.1.2.1 Cap on Unbundled DS3 Loop Circuits.** CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled loops.

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3.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

**3.1.5 Dark Fiber Loops Including Fiber Sub-loop.** Qwest is not required to provide CLEC with access to a Dark Fiber Loop on an unbundled basis except for UDF-MTE Subloop below. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

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**3.1.5.3 UDF MTE Subloop** begins at or near an MTE to provide access to MTE premises wiring.

3.1.5.3.1 Access to Dark Fiber MTE Subloops at or near an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. The termination and placement of CLEC fiber facilities at an MTE is solely the responsibility of CLEC. CLEC is responsible for all negotiations with the End User Customer and or premises owner for such placement of CLEC facilities.

3.1.5.3.2 Termination at an MTE. CLEC shall access the UDF MTE Subloop on the MTE premises at a technically feasible point if possible. If access is not technically feasible on the MTE premises, then CLEC may request access to UDF MTE Subloop at a technically feasible point near the MTE premises. Qwest will prepare and submit to CLEC a quote along with the original Field Verification Quote Preparation form

(FVQP) within the interval set forth in Exhibit C. Quotes are on an Individual Case Basis (ICB) and will include costs and an interval in accordance within the interval set forth in the Agreement.

3.1.5.3.3 A complex IRI is used to determine if a UDF MTE Subloop is available to gain access to network infrastructure within an MTE. Quotes are on an Individual Case Basis (ICB) and may include costs in addition to any installation charges specified in Exhibit A. of your Agreement.

**3.1.6 FTTH and FTTC Loops.** For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's Premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's Premises.

**3.1.6.1 FTTH/FTTC New Builds.** Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's Premises that had not previously been served by any loop facility prior to October 2, 2003.

**3.1.6.2 FTTH/FTTC Overbuilds.** Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH/FTTC loop parallel to, or in replacement of, an existing copper loop facility:

3.1.6.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's Premises after deploying the FTTH/FTTC loop to such Premises, and (ii) upon request provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition on an Individual Case Basis. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 3.1.6.2.1 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 3.1.6.3 below.



3.1.6.2.2 In the event Qwest, in accordance with the provisions of Section 3.1.6.3 below, retires the existing copper loop connected to the End User Customer's Premises, Qwest shall provide access, as an Unbundled Network Element, over the FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

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

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

**3.1.7 Hybrid Loops.** A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

3.1.7.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, but not DSL, Qwest shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Qwest's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.7.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

3.1.7.2.1 Provide non-discriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or

3.1.7.2.2 Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis.

**3.1.8 Subloop Unbundling.** An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3.

3.1.8.1 Qwest's obligation to construct a Single Point of Interface (SPOI) is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE. In addition, Qwest shall have an obligation to construct a SPOI only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI.

3.1.8.2 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, refers to creation of a cross connect field and does not constitute Collocation. The terms and conditions of Collocation do not apply to Cross-Connect Collocation if required at or near an MTE.

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

**3.1.9 Line Sharing.** Qwest shall not be required to provide Line Sharing unless the Agreement has been amended with a Qwest Commercial Line Sharing Amendment.

**3.1.10 Shared Distribution Loop.** Qwest shall not be required to provide Shared Distribution Loop unless the Agreement has been amended with a Qwest Commercial Shared Distribution Loop Amendment.

**4.0 Unbundled Dedicated Interoffice Transport (UDIT)**

4.0.1 Qwest is not obligated to provide CLEC with unbundled access to dedicated transport that does not connect a pair of Qwest Wire Centers.

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

4.1 UDIT is available pursuant to CLEC's Agreement and the following terms and conditions.

**4.1.1 DS1 UDIT.** Qwest shall unbundle DS1 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Qwest must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

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

**4.1.2 DS3 UDIT -** Qwest shall unbundle DS3 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.2.1 CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated transport is available on an unbundled basis.

4.1.3 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

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**4.1.7 Unbundled Dark Fiber (UDF) IOF**

4.1.7.1 Dedicated dark fiber transport shall be made available to CLEC on an unbundled basis as set forth in the Interconnection Agreement and as set forth

below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

4.1.7.1.1 Qwest shall unbundle dark fiber transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.7.1.2 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

**4.1.8 E-UDF and M-UDF (Meet Point Billed-UDF) Transition Language.** Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, any ASRs for Extended Unbundled Dark Fiber (E-UDF) or M-UDF (Meet Point UDF).

## **5.0 Unbundled Local Switching**

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

#### **5.1.1 DS0 Capacity (Mass Market)**

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

5.1.1.4 Qwest is not required to provide access to signaling, call-related databases, and shared transport facilities on an unbundled basis.

**5.1.2 Enterprise Switching. DS1 Capacity and above (i.e., enterprise market)** Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

## **6.0 Unbundled Network Element Combinations**

### **6.1 Enhanced Extended Loop (EEL)**

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

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

6.1.1.2 CLEC EEL certification process is replaced by the Certification

process described in Sections 2.9.1.3.

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

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

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

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

**6.1.1.7 Failure to Convert Non-Compliant EEL.** Absent CLEC Transition of non-compliant EEL within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

## **6.2 Loop-Mux Combination (LMC)**

### **6.2.1 Description**

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

**6.2.1.2** LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth

via a PLT/SA DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

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

## **6.2.2 Terms and conditions**

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

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

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

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

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

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

## **6.2.3 Rate Elements**

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

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

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

## **6.2.4 Ordering Process**

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

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

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

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

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

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

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

6.2.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA or EDI interfaces or through facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4<sup>th</sup> of July), Labor Day, Thanksgiving Day and Christmas Day.

## **6.2.5 Billing**

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

## **6.2.6 Maintenance and Repair**

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

## **6.3 Commingling**

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle

Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements.

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

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

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

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

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

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

## **7.0 Ratcheting**

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



commingling will not affect the prices of UNEs or UNE Combinations involved.

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

## **8.0 Routine Network Modifications**

8.1 Qwest shall make all routine network modifications to unbundled loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Qwest shall perform these routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.2 A routine network modification is an activity that Qwest regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Qwest ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

**TRO and TRRO Exhibit A  
 Transition Rates  
 Oregon\***

Amendment	EAS / Local Traffic Reciprocal Compensation Election			Options		Notes	
	Recurring	Non-Recurring	Other	Rate	Notes	Notes	Notes
<b>9.0 Unbundled Network Elements (UNEs)</b>							
<b>9.2 Unbundled Loops</b>							
9.2.8 Private Line / Special Access to Unbundled Loop Conversion (as is)				\$38.18			12
<b>9.6 Unbundled Dedicated Interoffice Transport (UDIT)</b>							
9.6.12 Private Line / Special Access to UDIT Conversion (as is)				\$123.96			1
<b>9.23 UNE Combinations</b>							
9.23.6.5 Private Line / Special Access to LMC Conversion (as is)				\$38.18			12
9.23.7.6 Private Line / Special Access to EEL Conversion (as is)				\$38.18			12

**NOTES:**

- [1] Rates not addressed in a Cost Docket (estimated TELRIC)
- [12] Rates proposed in UM 1025



**Qwest Services Corporation**  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Phone 303.383.6552  
Facsimile 303.295.7049  
[andrew.creighton@qwest.com](mailto:andrew.creighton@qwest.com)

**Andrew J. Creighton**  
Corporate Counsel

December 18, 2007

Hunter Construction Inc.  
dba Hunter Communications and  
dba Core Digital Services  
Richard W. Ryan  
801 Enterprise Drive  
Central Point, OR 97502

Re: TRO/TRRO Amendment Arbitration Window

Mr. Ryan,

Qwest Corporation ("Qwest") proposed and attempted to enter into an amendment to our interconnection agreements with Hunter Construction Inc. dba Hunter Communications and dba Core Digital Services for the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO"). Despite those attempts, you failed to enter into that amendment under any applicable change of law process or dispute resolution provision in our interconnection agreements.

This letter serves as a request under Section 252 of the Telecommunications Act that you complete the negotiations of the TRO/TRRO amendment to our interconnection agreements. Qwest currently plans to petition the applicable State commission to arbitrate the TRO/TRRO amendment during the period from the 135th to the 160th day (inclusive) after the date of this letter absent the parties' entering into a mutually agreeable TRO/TRRO amendment to our interconnection agreements.

The form of the TRO/TRRO amendment we previously sent to you is attached to this letter for you to reconsider. If you are now agreeable to entering into the amendment, please sign three copies of the enclosed amendment and return them to Mr. Steve Dea at the following address:

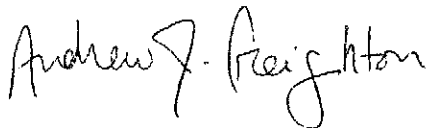
Steve Dea  
Interconnection Manager  
Qwest Corporation  
1801 California Street, Suite 2410  
Denver, CO 80202  
303-965-3029  
303-965-3527 (fax)  
[steve.dea@qwest.com](mailto:steve.dea@qwest.com)

Hunter Construction Inc.  
dba Hunter Communications and  
dba Core Digital Services  
December 18, 2007  
Page 2

Upon execution by Qwest, Qwest will return one fully executed original to you, Qwest will retain one, and Qwest will file the third with the appropriate State commission.

If you wish to further discuss the TRO/TRRO amendment with Qwest, please contact Bob Kennedy at 402.422.7397.

Sincerely,

A handwritten signature in black ink that reads "Andrew J. Creighton". The signature is written in a cursive style with a large, stylized initial "A".

Andrew J. Creighton

cc: Larry Christensen  
Bob Kennedy



Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Phone 303.383.6552  
Facsimile 303.295.7049  
[andrew.creighton@qwest.com](mailto:andrew.creighton@qwest.com)

Exhibit 3

Andrew J. Creighton  
Corporate Counsel

February 1, 2008

Hunter Construction Inc.  
dba Hunter Communications and  
dba Core Digital Services  
Richard W. Ryan  
801 Enterprise Drive  
Central Point, OR 97502

Re: TRO/TRRO Amendment Arbitration Window

Mr. Ryan,

I sent a letter to you dated December 18, 2007 regarding the need for you to enter into a TRO/TRRO amendment to your interconnection agreements with Qwest. I understand this has not occurred yet. Qwest currently plans to petition the applicable State commission to arbitrate a TRO/TRRO amendment during the period from April 30, 2008 to May 25, 2008 absent the parties' entering into a mutually agreeable TRO/TRRO amendment to our interconnection agreements. Please contact Bob Kennedy at 402.422.7397 to finalize the TRO/TRRO amendment at your earliest convenience.

Sincerely,

A handwritten signature in black ink that reads "Andrew J. Creighton". The signature is written in a cursive, flowing style.

Andrew J. Creighton

cc: Larry Christensen  
Bob Kennedy

---

**From:** Creighton, Andrew  
**Sent:** Wednesday, April 02, 2008 10:30 AM  
**To:** 'rryan@coreds.net'  
**Cc:** Kennedy, Robert.F; Dea, Steve; Interconnection Agreements  
**Subject:** FW: Qwest - Hunter Construction Inc. TRO-TRRO(2) Amd for signature - OR

**Attachments:** Hunter -TRO-TRRO(2)-Amd 3-13-07.doc; Hunter-OR Exh A TRRO abbrev 7-21-06.xls

Mr. Ryan,

I am just following up on the status of this. Qwest would like to finalize before the arbitration window opens on April 29.

Thank you,  
Andy

Andrew J. Creighton  
Qwest Corporation  
Corporate Counsel  
Phone: 303.383.6552  
Fax: 303.295.7049

Only the named recipient(s) should read this e-mail. It may contain privileged or confidential information. If you are not a named recipient or you received this e-mail by mistake, please notify me immediately by reply e-mail and delete the message.

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**From:** Coffin, Kristi  
**Sent:** Thursday, February 28, 2008 3:07 PM  
**To:** 'rryan@coreds.net'  
**Cc:** Kennedy, Robert.F; Interconnection Agreements  
**Subject:** Qwest - Hunter Construction Inc. TRO-TRRO(2) Amd for signature - OR

Richard Ryan  
Hunter Construction Inc. dba Hunter Communications and dba Core Digital Services  
801 Enterprise Drive  
Central Point, OR 97502  
Phone:(541) 772-9282 Ext 2111  
e-mail: rryan@coreds.net

Dear Richard Ryan:

At the request of Robert (Bob) Kennedy (Qwest Wholesale Negotiator), attached for signature is the TRO-TRRO Amendment to the Interconnection Agreement between Qwest Corporation and Hunter Construction Inc. dba Hunter Communications and dba Core Digital Services, for the State of Oregon.

If acceptable, please print, sign and return three (3) originals of the full document to Mr. Steve Dea at the following address:

Mr. Steve Dea  
Interconnection Manager  
Qwest Corporation  
1801 California Street, Suite 2410  
Denver, Colorado 80202  
303-965-3029

303-965-3527 (fax)  
steve.dea@qwest.com <<mailto:steve.dea@qwest.com>>

Upon execution by Qwest, one fully executed original will be returned to you, Qwest will retain one, and the third will be filed with the appropriate State Commission.

Should Qwest not receive the executed Amendment **by March 14, 2008**, Qwest may rescind its willingness to consider the terms and conditions.

Please contact Bob Kennedy directly at 402-422-7397 should you have questions.

Thank you,



Hunter Hunter-OR Exh A  
TRRO(2)-Amd 3-TRRO abbrev 7-..

*Kristi J. Coffin*

Qwest Legal Department/CD&S  
1801 California , Suite 1000  
Denver, CO 80202  
phone - 303-383-6490  
fax - 303-295-6973

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Mr. Ryan,

Qwest plans to commence preparing its PUC filings for the TRO/TRRO amendment this week. We would like to avoid filing with the applicable PUC if Hunter Construction plans to execute the TRO/TRRO amendment. Please advise us if Hunter Construction plans to execute the amendment this week and send it to Qwest.

I am also available to discuss this with your counsel if you have engaged one.

Thank you,  
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**Sent:** Tuesday, April 15, 2008 12:48 PM  
**To:** 'rryan@coreds.net'  
**Cc:** Kennedy, Robert.F; Dea, Steve; Interconnection Agreements  
**Subject:** RE: Qwest - Hunter Construction Inc. TRO-TRRO(2) Amd for signature - OR

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Thank you,  
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Should Qwest not receive the executed Amendment by **March 14, 2008**, Qwest may rescind its willingness to consider the terms and conditions.

Please contact Bob Kennedy directly at 402-422-7397 should you have questions.

Thank you,

<< File: Hunter -TRO-TRRO(2)-Amd 3-13-07.doc >> << File: Hunter-OR Exh A TRRO abbrev 7-21-06.xls >>

*Kristi J. Coffin*

Qwest Legal Department/CD&S  
1801 California , Suite 1000  
Denver, CO 80202  
phone - 303-383-6490  
fax - 303-295-6973

**From:** Creighton, Andrew  
**Sent:** Friday, May 16, 2008 1:41 PM  
**To:** 'rryan@coreds.net'  
**Cc:** Duarte, Alex; Kennedy, Robert.F; Dea, Steve; Christensen, Larry  
**Subject:** RE: Qwest - Hunter Construction Inc. TRO-TRRO(2) Amd for signature - OR

**Attachments:** Hunter- ARB Petition.doc

Mr. Ryan,

I have attached a draft pleading we plan to file with the OR commission as early as next Tuesday regarding this matter. Please advise us if you will be signing the TRO/TRRO amendment by the close of business on Monday, May 19, 2008.



Hunter- ARB  
Petition.doc (64 K...

Thank you,  
Andy

Andrew J. Creighton  
Qwest Corporation  
Corporate Counsel  
Phone: 303.383.6552  
Fax: 303.295.7049

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*Kristi J. Coffin*

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