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July 25, 2006

Annette Taylor  
Public Utility Commission of Oregon  
550 Capital Street, NE  
Suite 215  
Salem, OR 97301

Re: UM 1251

Dear Ms. Taylor:

Pursuant to your email dated July 24, 2006, enclosed for filing are the original and five copies of the **Corrected** Surrebuttal Testimony of Douglas Denney. The substance of this testimony has not changed. The Joint CLECs inadvertently included some highly confidential information in the original public version of this testimony. The testimony has now been corrected to appropriately identify and redact all highly confidential information. In addition, the page and line numbering are now consistent between the public and highly confidential versions.

Highly confidential testimony and exhibit pages are sealed in separate envelopes. Please replace the original version of this testimony with this corrected version and either destroy the original or return it to me.

I apologize for any inconvenience. Please contact me with any questions.

Very truly yours,

Davis Wright Tremaine LLP

Sarah K. Wallace

SKW:lt

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OREGON**

**UM 1251**

In the Matter of

COVAD COMMUNICATIONS COMPANY,  
ESCHELON TELECOM OF OREGON, INC.,  
INTEGRA TELECOM OF OREGON, INC.,  
MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC., and XO COMMUNICATIONS  
SERVICES, INC.

Request for Commission Approval of Non-  
Impairment Wire Center List.

**CORRECTED SURREBUTTAL TESTIMONY OF**

**DOUGLAS DENNEY**

**ON BEHALF OF ESCHELON TELECOM, INC., COVAD COMMUNICATIONS  
CORPORATION, AND XO COMMUNICATIONS SERVICES, INC.  
(THE "JOINT CLECs")**

**PUBLIC VERSION**

**JULY 25, 2006**

**I. INTRODUCTION**

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**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Douglas Denney. I work at 730 2<sup>nd</sup> Avenue South, Suite 900, in Minneapolis, Minnesota.

**Q. DID YOU FILE REBUTTAL TESTIMONY IN THIS DOCKET ON MAY 19, 2006?**

A. Yes.

**Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

A. The purpose of my testimony is to respond to two issues raised in Qwest's Response Testimony. The first issue, raised by Ms. Torrence<sup>1</sup>, relates to the dispute regarding fiber-based collocators in the Medford wire center. The second issue, raised by Mr. Brigham<sup>2</sup> concerns the current status of the California wire center proceeding and the need for December 2004 access line counts for CLEC review.

**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. First, Qwest has improperly classified the Medford wire center as Tier 1. Qwest does not properly rely upon the FCC's definition of fiber-based collocations, or the FCC's intent in establishing this definition in order to determine the number of fiber-based collocators in Medford. Qwest has inappropriately included two

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<sup>1</sup> Reply Testimony of Rachel Torrence on behalf of Qwest Corporation (*Torrence Reply*), June 16, 2006.

<sup>2</sup> Reply Testimony of Robert H. Brigham for Qwest Corporation (*Brigham Reply*), June 16, 2006.

1 purported fiber-based collators in the Medford central office that should not be  
2 counted under the FCC's definition.

3 Second, Qwest is incorrect when it states that the California Public Utilities  
4 Commission has approved AT&T's (fka SBC's) wire center list using December  
5 2003 ARMIS data. As indicated on Table 5 of my rebuttal testimony, the  
6 California Commission has not yet decided the issue of the proper vintage of line  
7 counts for determining "non-impaired" wire centers. Further, the Administrative  
8 Law Judge ("ALJ") in the California proceeding has in fact ordered AT&T to  
9 provide updated line counts, including December 2004 data, and AT&T has  
10 provided that information to the parties in that proceeding.

11 Finally, Table 6 below updates the parties' position with regard to the "non-  
12 impaired" status of Oregon wire centers. The only change to this table is to  
13 update Qwest's position with regard to the Portland Belmont office. Qwest  
14 recognized that it had improperly classified this wire center as Tier 1.

15 **Table 6 (Update to Table 1 contained in Joint CLECS/1):**

16 **Summary of Joint CLEC's Investigation of Qwest's Wire Center List**

| Wire Center        | CLLI(8)  | Wire Center Designation |                  |
|--------------------|----------|-------------------------|------------------|
|                    |          | Qwest                   | Joint CLECs      |
| Eugene 10th Ave    | EUGNOR53 | T1                      | T2               |
| Medford            | MDFDOR33 | T1                      | T3               |
| Portland Belmont   | PTLDOR13 | T2                      | T2               |
| Portland Capitol   | PTLDOR69 | T1,<br>DS1 & DS3 Loops  | T1,<br>DS3 Loops |
| Salem State (Main) | SALMOR58 | T1                      | T2               |
| Bend               | BENDOR24 | T2                      | T3               |
| Portland Alpine    | PTLDOR11 | T2                      | T3               |

1 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

2 A. Yes, there are three highly confidential exhibits<sup>3</sup> to this testimony. The highly

3 confidential exhibits are described as follows: Highly Confidential JOINT

4 CLECs/14: [\* \* \* **BEGIN HIGHLY CONFIDENTIAL**] [REDACTED]

5 [REDACTED]; **[END HIGHLY CONFIDENTIAL \* \* \*]**

6 Highly Confidential JOINT CLECs/15: [\* \* \* **BEGIN HIGHLY**

7 **CONFIDENTIAL**] [REDACTED]

8 [REDACTED]; **[END HIGHLY CONFIDENTIAL \* \* \*]**

9 and Highly Confidential JOINT CLECs/16: Declaration of Cleve Tooker.

10 **II. FIBER-BASED COLLOCATION**

11 **Q. PLEASE SUMMARIZE THE DISPUTE REGARDING FIBER-BASED**  
12 **COLLOCATIONS IN QWEST'S OREGON WIRE CENTERS.**

13 A. Qwest relied upon fiber-based collocations to support its “non-impairment” wire  
14 center designations in only three Oregon wire centers, Portland Capitol, Portland  
15 Belmont and Medford. The parties agree that the Portland Capitol wire center has  
16 at least four fiber-based collocators, which supports at least a Tier 1 designation  
17 for this wire center. The parties also agree that the Portland Belmont wire center  
18 should be classified as Tier 2. Qwest downgraded this office from Tier 1 to Tier 2  
19 based upon the Joint CLECs review of the data.<sup>4</sup> The Medford office, however,

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<sup>3</sup> These exhibits are being filed as highly confidential. The exhibits themselves are public documents, but their use in combination with this testimony would reveal the name and location of one of the fiber-based collocations under dispute in this docket. Qwest has filed the names and locations of fiber-based collocators as highly confidential.

<sup>4</sup> See *Torrence Reply*, page 12 lines 22 through page 13 line 2.

1 remains in dispute. Qwest classifies this office as Tier 1, while the Joint CLECs  
2 believe this office should be classified as Tier 3.

3 **Q. HOW DOES THE FCC DEFINE A FIBER-BASED COLLOCATOR?**

4 A. 47 C.F.R § 51.5 defines a fiber-based collocator as follows:

5 A fiber-based collocator is any carrier, unaffiliated with the incumbent  
6 LEC, that maintains a collocation arrangement in an incumbent LEC wire  
7 center, with active electrical power supply, and operates a fiber-optic cable  
8 or comparable transmission facility that (1) terminates at a collocation  
9 arrangement within the wire center; (2) leaves the incumbent LEC wire  
10 center premises; and (3) is owned by a party other than the incumbent  
11 LEC or any affiliate of the incumbent LEC, except as set forth in this  
12 paragraph. Dark fiber obtained from an incumbent LEC on an  
13 indefeasible right of use basis shall be treated as non-incumbent LEC  
14 fiber-optic cable. Two or more affiliated fiber-based collocators in a  
15 single wire center shall collectively be counted as a single fiber-based  
16 collocator. For purposes of this paragraph, the term affiliate is defined by  
17 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

18 Paragraphs 93 through 102 of the *TRRO* explain the FCC's rationale for this  
19 definition. Relevant to the dispute in Oregon, paragraph 95 states, "Our fiber-  
20 based collocation test captures intermodal competitors' transport facilities..."

21 Paragraph 101 states, "Additionally, we find that fiber-based collocation provides  
22 a reasonable proxy for where significant revenue opportunities exist for  
23 competitive LECs..."

24 **Q. PLEASE EXPLAIN THE DISPUTE OVER THE FIBER-BASED**  
25 **COLLOCATORS IN THE MEDFORD WIRE CENTER?**

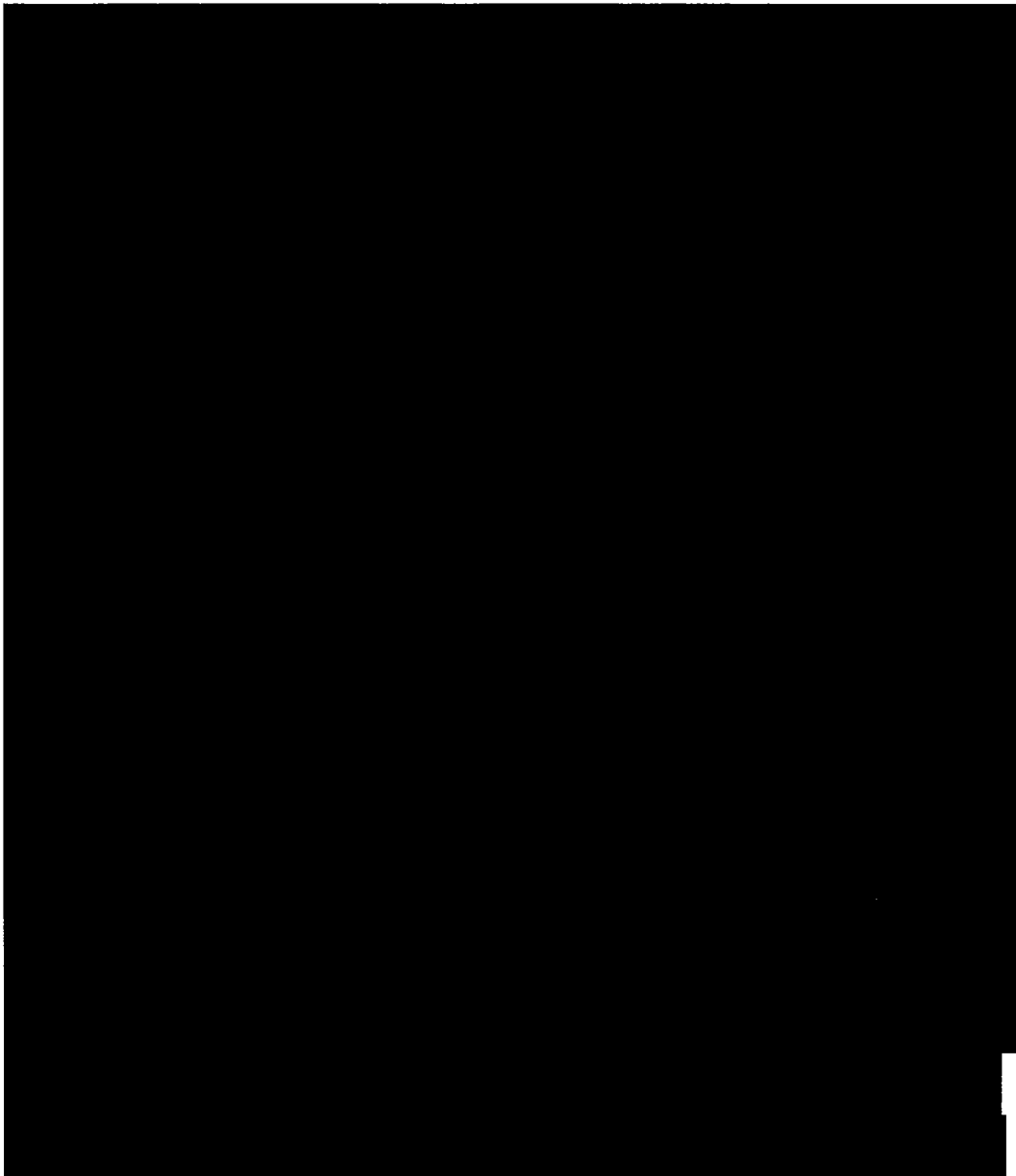
26 A. [\*\*\* BEGIN HIGHLY CONFIDENTIAL] 

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[END HIGHLY CONFIDENTIAL \*\*\*]

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**III. RESPONSE TO BRIGHAM**

**Q. MR. BRIGHAM STATES THAT THE CALIFORNIA COMMISSION HAS “APPROVED SBC’S WIRE CENTER *TRRO* NON-IMPAIRMENT LISTS, EACH OF WHICH WERE BASED UPON *DECEMBER 2003* ACCESS LINE DATA.” IS THIS TRUE?**

A. No, the California Public Utilities Commission’s proceeding is not yet completed, and the decision regarding the vintage of the line count data has not been decided. Mr. Brigham states, “Had these commissions believed a more current data vintage were required, they most certainly would have ordered SBC to provide updated access line counts.”<sup>11</sup> In fact, this is exactly what happened in California. The ALJ in the California Commission proceeding directed AT&T (fka SBC) to provide the California Joint CLECs with December 2004 access line data and AT&T provided this data on June 14, 2006 two days before Mr. Brigham’s testimony was filed.<sup>12</sup> Clearly the California Public Utilities Commission has recognized the importance of reviewing updated line counts.

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<sup>11</sup> *Brigham Reply*, page 7, lines 18 – 20.  
<sup>12</sup> C.06-03-023; oral decision rendered June 12, 2006; no written decision available.



**VII. CONCLUSION**

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2 **Q. WHAT RECOMMENDATIONS DO YOU HAVE FOR THE OREGON**  
3 **COMMISSION BASED UPON YOUR SURREBUTTAL TESTIMONY?**

4 A. I have the following recommendations for this Commission:

5 1) The Medford wire center should properly be classified as Tier 3. There does  
6 not exist a sufficient number of fiber-based collocators in order to classify this  
7 wire center as Tier 1 or even Tier 2.

8 2) This Commission should require Qwest to provide December 2004 access line  
9 counts for CLEC review.<sup>13</sup>

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes.

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<sup>13</sup> See the Joint CLECs' Motion to Compel Qwest to Respond to Data Requests, filed in this docket on June 9, 2006.

**CERTIFICATE OF SERVICE**

**UM 1251**

I hereby certify that on July 25, 2006, a copy of the Corrected Surrebuttal Testimony of Douglas Denney on behalf of Eschelon Telecom, Inc., Covad Communications Corporation, and XO Communications Services, Inc. (Public Version), in the above referenced docket was sent via e-mail, to the following:

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