

CARRIER-TO-CARRIER AGREEMENT CHECKLIST

INSTRUCTIONS: Please complete all applicable parts of this form and submit it with related materials when filing a carrier-to-carrier agreement pursuant to 47 U.S.C. 252 and OAR 860-016-0000 et al. The Commission will utilize the information contained in this form to determine how to process the filing. **Unless you request otherwise in writing, the Commission will serve all documents related to the review of this agreement electronically to the e-mail addresses listed below.**

1. PARTIES *Requesting Carrier* *Affected Carrier*

Name of Party:

Contact for Processing Questions:

Name:

Telephone:

E-mail:

Contact for Legal Questions (if different):

Name:

Telephone:

E-mail:

Other Persons wanting E-mail service of documents (if any):

Name:

E-mail:

2. TYPE OF FILING NOTE: Parties making multiple requests (such as seeking to adopt a previously approved agreement and Commission approval of new negotiated amendments to that agreement) should submit a separate checklist for each requested action.

Adoption: Adopts existing carrier-to-carrier agreement filed with Commission.

- Docket ARB
- Parties to prior agreement &
- Check one:

Adopts base agreement only; or

Adopts base agreement and subsequent amendments approved in Order No(s).

New Agreement: Seeks approval of new negotiated agreement.

- | | |
|--|--|
| • Does filing replace an existing agreement between the parties? | • If filing involves Qwest Communications, does it utilize the terms of an SGAT? |
| • NO | • NO |
| • YES, Docket ARB | • YES, Revision |

Amendment: Amends an existing carrier-to-carrier agreement.

Docket ARB

Other: Please explain.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB199

In the Matter of the Application of Eschelon)	
for Approval of a Wireline Interconnection)	APPLICATION FOR APPROVAL OF
Agreement Pursuant to 47 U.S.C. §252(E))	INTERCONNECTION AGREEMENT
)	
)	

Pursuant to 47 U.S.C § 252(e)(1), Eschelon Telecom, Inc., Eschelon Telecom of Oregon, Inc. and Advanced TelCom, Inc. (collectively “Eschelon”) file the enclosed documents between Qwest Corporation (“Qwest”) and Eschelon¹ for approval by the Commission of any documents that the Commission finds are interconnection agreements, or an amendment to the existing interconnection agreement previously approved by this Commission. The enclosed documents include: Qwest Master Services Agreement (MSA) (with its exhibits: Service Exhibit 1 – Qwest Platform Plus Service; Attachment A to Service Exhibit 1 – Performance Targets for Qwest QPP Service; Qwest Platform Plus (QPP) Rate Sheet; and Qwest Platform Plus (QPP) Rate Page – Port Rate Increases) and Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts (collectively “QPP” documents or agreements).²

Similar QPP documents were recently filed in several states by Qwest and MCImetro Access Transmission Services, LLC (“MCI”). In those proceedings, MCI and AT&T described reasons why the QPP agreements may be subject to the federal Act’s Section 252 filing

¹ The “QPP” documents were signed by Eschelon Telecom Inc. on behalf of itself and its affiliates, and the documents entitled “Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts” were signed separately by Eschelon Telecom of Oregon, Inc. and Advanced TelCom, Inc. Copies of these documents accompany this filing.

² Although Qwest may have separately filed at least one of these documents (entitled “Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts”) for approval as an amendment to the previously approved interconnection agreement between the parties, the enclosed documents are inter-related, and therefore Eschelon files all of them for the Commission’s consideration.

requirement. Enclosed, for example, is an Order of the Washington State Utilities and Transportation Commission³ in which the Commission summarizes such arguments and finds the agreements need to be filed for approval.⁴ Here in Oregon, the Commission also found that the QPP agreements must be filed with the Commission for approval or disapproval.⁵ Eschelon will not repeat those arguments here. In addition to the arguments previously made by other parties, Eschelon notes that the enclosed QPP documents address the transition, over the ongoing period of time extending until April 1, 2005, of UNE-E to QPP.⁶ UNE-E was previously available to Eschelon pursuant to filed interconnection agreement amendments. From January 1, 2005 through April 1, 2005, its availability on a limited basis for the base of customers, during the transition, is governed by the QPP documents.

Eschelon intends to abide by any filing requirements and accordingly files the enclosed documents, all of which are public (non-confidential). Eschelon agrees with the arguments asserted by other parties in favor of the Section 252 filing requirement,⁷ but in any case will abide by the Commission's ruling on the status of the enclosed documents. To the extent that

³ See Order Approving Negotiated Interconnection Agreement in its Entirety, *In re. MCImetro Access Transmission Services, LLC and Qwest Corporation for Approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Docket Nos. UT-960310 & UT-043084, Order No. 01 (Oct. 20, 2004). See Exhibit 1. To Eschelon's knowledge, Qwest has not appealed this Order.

⁴ Also enclosed are informal copies (print outs) of decisions from Colorado, Iowa, Minnesota, and Utah, as well as Arizona Staff comments, for the Commission's convenience. See Exhibit 1. (There may be other decisions, or later motions for reconsideration or appeals, that Eschelon did not locate, but as Eschelon was not a party to those proceedings, it has not received copies of all of them.) In Arizona, the Staff argues that all of the agreements are subject to the filing requirement and review process, but the Commission has not yet ruled on the issue. In all of the other of these states, the state commissions found that the agreements are interconnection agreements subject to the requirement to file them for approval by the commissions. See Exhibit 1.

⁵ See Order, *In re. MCImetro Access Transmission Services, L.L.C. and Qwest Corporation for Approval of a Negotiated Agreement Under the Telecommunications Act of 1996*, OR Docket No. ARB 6(14) & (15), Order No. 04-661 (Nov. 9, 2004), p. 4 ["Oregon QPP Order"] (copied included as part of Exhibit 1).

⁶ See ¶3.9.2 of Service Exhibit 1.

⁷ The QPP MSA, at paragraph 23, provides: "Each party reserves its rights with respect to whether this Agreement is subject to Sections 251 and 252 of the Act."

the Commission finds that any or all of the enclosed documents fall under the Section 252 filing requirements, Eschelon asks the Commission to approve those agreements, for the reasons stated by MCI and the other Commissions that have approved them.

In the Qwest-MCI case, this Commission rejected the QPP agreements based on Section 4.0 of the QPP-MSA.⁸ The Commission referenced a Staff recommendation to reject the agreement “because Section 4.0 . . . states that . . . the QPP Agreement . . . need not be filed with the Commission for approval.”⁹ Neither MCI¹⁰ nor Eschelon agree with this reading of Section 4.0. Paragraph 23 of the QPP-MSA specifically provides that: “Each party reserves its rights with respect to whether this Agreement is subject to Sections 251 and 252 of the Act.” At a minimum, the agreement allows filing with the Commission. And, in this case, it has been publicly filed with the Commission and is available for the Commission’s review. If a provision can be reasonably read in a manner that is legal and enforceable, it should be read as such particularly when, as here, the Commission has the ability to ensure that the provision will be so interpreted by so indicating in an Order approving the agreement. As part of approving the agreement, the Commission may also state in its Order that any party opting into the agreement must file the resulting agreement with the Commission to ensure that any language is not interpreted otherwise. By doing so, the Commission will ensure that both in the present case and in future cases that the Staff’s valid concern that such agreements must be filed for approval will be addressed.

The QPP-MSA, which is based on the Qwest template, provides: “In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, either Party may immediately upon written notice to the

⁸ See Exhibit 1 (Oregon QPP Order, p. 5).

⁹ See Exhibit 1 (Oregon QPP Order, p. 5).

other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement.” Given this language and the FCC’s recent ruling on the status of UNE-P, modifying or rejecting the agreements (which now provide the only alternative platform product to UNE-P)¹¹ would impose a hardship on Eschelon. Therefore, if the Commission may modify the documents or reject any document that it finds requires filing pursuant to Section 252 and/or state rules, Eschelon respectfully requests an opportunity to be heard on the issue before the Commission rules.

Respectfully submitted,

Dated: February 11, 2005

Karen L. Clauson
Senior Director of Interconnection/Attorney
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 900
Minneapolis, MN 55402
(612) 436-6026 (Direct)
(612) 436-6816 (Fax)
klclauson@eschelon.com

¹⁰ See MCI Petition for Reconsideration, *In re. MCI Metro Access Transmission Services, L.L.C. and Qwest Corporation for Approval of a Negotiated Agreement Under the Telecommunications Act of 1996*, OR Docket No. ARB 6(14) & (15) (Jan. 10, 2005).

¹¹ On or after January 4, 2005, Qwest distributed a letter to CLECs in which Qwest stated that it may withdraw QPP after January 31, 2005. See Exhibit 2. In later Emails to Eschelon, Qwest confirmed that it would withdraw QPP after that date and would not make the Qwest-MCI QPP agreement available for opt-in, as Qwest claimed the underlying interconnection agreement had expired. See *id.*

QWEST MASTER SERVICES AGREEMENT

This Master Services Agreement, which includes this signature page, the subsequent general terms and conditions, the Rate Sheet for each applicable state, Exhibit 1 (Qwest Platform Plus Service), and Attachment A to Exhibit 1 (Performance Metrics) attached hereto or incorporated herein by reference (collectively the "Agreement") is entered into between Qwest Corporation ("Qwest") and Eschelon Telecom, Inc. on behalf of its affiliates ("CLEC") (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"), on behalf of itself and its Affiliates. This Agreement may be executed in counterparts. This Agreement shall become effective on the Effective Date. The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

QWEST CORPORATION:

ESCHELON TELECOM, INC. on behalf of its affiliates:

By: _____
 [Name]: _____
 [Title]: _____
 Date: _____

By: _____
 [Name]: Richard A. Smith
 [Title]: CEO/President
 Date: _____

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

To Qwest Corp.:
 1801 California Street, Suite 2420
 Denver, CO 80202
 Phone #: 303-965-3029
 Facsimile #: 303-896-7077
 E-mail: Intagree@qwest.com
 Attention: Manager-Interconnection

To Eschelon Telecom, Inc.:
 730 Second Avenue, Suite 1200
 Minneapolis, MN 55402
 Phone #: 612-436-6692
 Facsimile #: 612-436-6816
 E-mail: gppnotices@eschelon.com
 Attention: J. Jeffrey Oxley

With copy to: Qwest
 c/o 1801 California Street, 10th floor
 Denver, Colorado 80202
 Attention: Corporate Counsel, Wholesale
 Reference: MSA for Qwest Platform Plus Service

Eschelon Telecom, Inc.
 Office of General Counsel and Sr. Director of Interconnection
 730 Second Avenue South, Suite 900
 Minneapolis, MN 55402

APPLICABLE SERVICES:

APPLICABLE STATES:

Qwest agrees to offer and CLEC intends to purchase the Services indicated below by CLEC's signatory initialing on the applicable blanks:

Qwest agrees to offer and CLEC intends to purchase Qwest Platform Plus ("QPP") service in the states indicated below by CLEC's signatory initialing on the applicable blanks:

Exhibit 1 - Qwest Platform Plus Service

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

The Parties may amend the Qwest Master Services Agreement in writing from time to time to include additional products and services.

January 24, 2005/pjd/Eschelon
 AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
 CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008
 MN Agreement No. CDS-050124-0006 WA Agreement No. CDS-050124-0009
 Qwest MSA

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QWEST MASTER SERVICES AGREEMENT

GENERAL TERMS AND CONDITIONS

WHEREAS, CLEC previously purchased on an unbundled basis from Qwest certain combinations of network elements, ancillary functions, and additional features, including without limitation the local loop, port, switching, and shared transport combination commonly known as unbundled network element platform ("UNE-P"). For purposes of this Agreement, UNE-P includes the product purchased by Eschelon under its Interconnection Agreement which is sometimes referred to as "UNE-E" (Unbundled Network Element – Eschelon);

WHEREAS such UNE-P arrangements were previously obtained by CLEC under the terms and conditions of certain interconnection agreements ("ICA"), including without limitation in certain states Qwest's statement of generally available terms ("SGAT");

WHEREAS both CLEC and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d 554 (March 2, 2004) ("DC Circuit Mandate"), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act (the "Act"); and

WHEREAS to address such uncertainty and to create a stable arrangement for the continued availability to CLEC from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements the parties have contemporaneously entered into ICA amendments;

Now, therefore, in consideration of the terms and conditions contained herein, CLEC and Qwest hereby mutually agree as follows:

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

2. **Effective Date.** This Amendment shall become effective upon the latest execution date by the Parties. ("Effective Date").

3. **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through July 31, 2008. At any time within 6 months prior to expiration of the Agreement, either Party may provide notice of renegotiation. The Parties shall meet and negotiate in good faith a transition of existing customers. Upon mutual agreement, the term of the Agreement may be extended upon the same terms and conditions for no more than one (1) extension period, and such extension period shall not exceed six (6) months to allow CLEC to transition its customers to other services. In the event that at the expiration of the Agreement or of the extension period, as the case may be, CLEC has any remaining customers served under this Agreement, Qwest may immediately convert CLEC to an equivalent alternative service at market-based wholesale rates.

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

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

4.2 Each of the Services shall be provided pursuant to the terms and conditions of this Agreement. In the event of a conflict between the terms of any Service Exhibit attached hereto and these General Terms and Conditions, the Service Exhibit shall control. The terms of this Agreement, including any Annex or Service Exhibit, shall supersede any inconsistent terms and conditions contained in an Order Form. CLEC acknowledges and agrees that the Services shall be offered by Qwest pursuant to this Agreement and are subject to (i) compliance with all applicable laws and regulations; and (ii) obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date regarding January 24, 2005/pjd/Eschelon

AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007
CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008
MN Agreement No. CDS-050124-0006 WA Agreement No. CDS-050124-0009
Qwest MSA

Qwest's obligation under Section 271 of the Act to continue to provide certain Network Elements ("Existing Rules"). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

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

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

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

5. **CLEC Information.** CLEC agrees to work with Qwest in good faith to promptly complete or update, as applicable, Qwest's "New Customer Questionnaire" to the extent that CLEC has not already done so, and CLEC shall hold Qwest harmless for any damages to or claims from CLEC caused by CLEC's failure to complete or update the questionnaire.

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QWEST MASTER SERVICES AGREEMENT

6. Financial Terms.

Rates and Terms

6.1 Each attached Service Exhibit specifies the description, terms, and conditions specific to that Network Element or service. The applicable rates for each Network Element or service contained in a Service Exhibit shall be contained in the applicable Rate Sheets, the contents of which are incorporated into this Agreement by reference. The Parties agree that the rates set forth in the Rate Sheet are just and reasonable. The Parties agree that no rates, charges, costs, or fees shall apply to the Network Elements or services provided under this Agreement other than as is set forth in the Rate Sheets. The rates will not necessarily include Taxes, fees, or surcharges. No Taxes, fees, or surcharges shall apply to the QPP™ service except such Taxes, fees and surcharges as apply to the UNE-P service as of June 14, 2004, unless a subsequent change in applicable law requires the applicability of new or additional Taxes, fees, or surcharges to the QPP™ service.

Taxes, Fees, and other Governmental Impositions

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

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

7. Intellectual Property.

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal rules and regulations relating to the Network Elements or service provided under

this Agreement, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

7.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) shall indemnify and hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. The obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or is not reasonably necessary to CLEC's use of the Network Elements and services offered by Qwest under this Agreement or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of, or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

7.3 To the extent required under applicable federal and state law, Qwest shall use commercially reasonable efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection shall be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 7.2, preceding.

7.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights

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QWEST MASTER SERVICES AGREEMENT

of the other Party or its Affiliates without execution of a separate agreement between the Parties.

7.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the services are in any way associated with or originated from the other Party or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements and services it uses to provide service to its End User Customers, provided it does not represent the Network Elements and services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates.

7.6 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective owners. The Parties shall comply with all Applicable Law governing Marks worldwide and neither Party will infringe the Marks of the other.

7.7 Since a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

8. Financial Responsibility, Payment and Security.

8.1 Payment Obligation. Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice (payment due date). If the payment due date is a Saturday, the payment shall be due on the previous Friday; if the payment due date is otherwise not a business day, the payment shall be due the next business day. Invoices shall be sent electronically, and shall bear the date on which they are sent, except that invoices sent on a day other than a business day shall be dated on the next business day.

8.2 Cessation of Order Processing. Qwest may discontinue processing orders for Network Elements and services provided pursuant to this Agreement for the failure of CLEC to make full payment for the relevant services, less any good faith disputed amount as provided for in this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If Qwest does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders for the relevant services from CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past-due charges for the relevant services not disputed in good faith under this Agreement, and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law

or equity, CLEC reserves the right to seek equitable relief including injunctive relief and specific performance.

8.3 Disconnection. Qwest may disconnect any and all relevant Network Elements and services provided under this Agreement for failure by CLEC to make full payment for such Network Elements or services, less any disputed amount as provided for in this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar Days following the payment due date provided that Qwest has first notified CLEC in writing at least thirty (30) days prior to disconnecting the relevant services. CLEC will pay the applicable reconnect charge set forth in the Rate Sheet required to reconnect Network Elements and services for each End User Customer disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the thirty (30) day notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all relevant services of the non-complying Party without further notice. Qwest shall provide a subsequent written notice at least two (2) business days prior to disconnecting service. Disconnect of certain Network Elements or services under this Agreement with respect to which CLEC has failed to pay undisputed charges shall not trigger the disconnection of Network Elements or services for which CLEC has paid all undisputed charges, and Qwest shall be permitted to disconnect under this section only those Network Elements or services for which CLEC fails to pay all undisputed charges prior to the expiration of the applicable thirty-day or two business day notice period. For reconnection of the non-paid service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. Both Parties agree, however, that the application of this Section 8.3 will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Qwest shall not effect a disconnection pursuant to this section in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

8.4 Billing Disputes. Should either Party dispute, in good faith, and withhold payment on any portion of the nonrecurring charges or monthly Billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, each Party shall pay all undisputed amounts due to the other Party. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

8.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of Qwest, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. The withholding Party may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, Qwest shall credit

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January 24, 2005/pjd/Escehlon

AZ Agreement No. CDS-050124-0004 OR Agreement No. CDS-050124-0007

CO Agreement No. CDS-050124-0005 UT Agreement No. CDS-050124-0008

MN Agreement No. CDS-050124-0006 WA Agreement No. CDS-050124-0009

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the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of Qwest, no further action is required.

8.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 8.4.3, and the dispute is resolved in favor of the disputing Party Qwest shall, no later than the next Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

8.4.3 If a Party fails to bill a charge or discovers an error on a bill it has already provided to the other Party, or if a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in Section 8.4, the Party may dispute the bill at a later time through an informal process notwithstanding the requirements of Section 8.4, but subject to the Dispute Resolution provision of this Agreement, and Applicable Law.

8.5 **Security Deposits.** In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date, Qwest may request a security deposit. A "material adverse change in financial condition" shall mean a Party is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with Qwest, or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous undisputed nonpayment situation. The Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment of a material amount of total monthly billing under the Agreement received thirty (30) calendar Days or more after the payment due date, three (3) or more times during a twelve (12) month period. The INITIAL deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by the billing party's actual monthly average charges, payment history under this agreement, or other relevant factors, but in no event shall the security deposit exceed five million dollars (\$5,000,000.00). Required deposits are due and payable within thirty (30) calendar Days after demand and non-payment shall be subject to 8.2 and 8.3 of this Section.

8.6 **Interest on Deposits.** Any interest earned on cash deposits shall be credited to CLEC in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits shall not be deemed subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of

satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request and Qwest will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

8.7 **Late Payment Penalty.** If any portion of the payment is received by Qwest after the payment due date as set forth above, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment penalty shall be due to Qwest. The late payment penalty shall be the portion of the payment not received by the payment due date multiplied by a late factor. The late factor shall be the lesser of: (1) The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the CLEC actually makes the payment to the Company, or (2) 0.000407 per day, compounded daily for the number of days from the payment due date to and including the date that the CLEC actually makes the payment to Qwest.

8.8 **Notice to End User Customers.** CLEC shall be responsible for notifying its End User Customers of any pending disconnection of a non-paid service by CLEC, if necessary, to allow those End User Customers to make other arrangements for such non-paid services.

9. **Conversions/Terminations.** If CLEC is obtaining services from Qwest under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to a service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein shall be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

9.1 In the event Qwest terminates the Provisioning of any service to CLEC for any reason, CLEC shall be responsible for providing any and all necessary notice to its End User Customers of the termination. In no case shall Qwest be responsible for providing such notice to CLEC's End User Customers. Qwest shall only be required to notify CLEC of Qwest's termination of the service on a timely basis consistent with FCC rules and notice requirements.

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

11. **Default and Breach**

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If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, including, but not limited to, Sections 6, 7, 8, 13, 16, 21, 29, 31, 32, 34, and 35, and such default or violation continues for thirty (30) calendar Days after written notice thereof, the other Party may terminate this Agreement and seek relief in accordance with the Dispute Resolution provision, or any remedy under this Agreement.

12. Limitation of Liability.

12.1 To the extent the Agreement or an Exhibit contains an express remedy in the form of a quality of service credit or other liquidated damages in connection with services provided by Qwest under this Agreement or for a failure to provide such services, such credit shall be deemed to be CLEC's sole remedy under this Agreement for losses, damages, or other claims related to or connected with the events giving rise to the claim for quality of service credit.

12.2 Neither Party shall be liable to the other for indirect, incidental, consequential, exemplary, punitive, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

12.3 Nothing contained in this Section 12 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 12 limit a Party's liability for failing to make any payment due under this Agreement.

12.4 The foregoing limitations apply to all causes of actions and claims, including without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts. In any arbitration under this Agreement, the Arbitrator shall not be able to award, nor shall any party be entitled to receive damages not otherwise recoverable under this agreement.

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

13. Indemnity.

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

13.1.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's

breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

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

13.2 The indemnification provided herein shall be conditioned upon:

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

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

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

14. Limited Warranties.

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14.1 Each party shall provide suitably qualified personnel to perform this Agreement and all services hereunder in a good and workmanlike manner and in material conformance with all applicable laws and regulations.

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

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

16. **Assignment or Sale.**

16.1 CLEC may not assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, CLEC may assign or transfer this Agreement to a corporate Affiliate or an entity under its control or to a purchaser of substantially all or substantially all of CLEC's assets related to the provisioning of local services in the Qwest region without the consent of Qwest, provided that the performance of this Agreement by any such assignee is guaranteed by the assignor. A Party making an assignment or transfer permitted by this Section shall provide prior written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

16.2 In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through facilities or services provided by Qwest under this Agreement, Qwest shall ensure that the transferee shall serve as a successor to and fully perform all of Qwest's responsibilities and obligations under this Agreement for a period of one-hundred-and-eighty (180) days from the effective date of such transfer or until such later time as the FCC may direct pursuant to the FCC's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest shall use best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Qwest's obligations after the above-stated transition period pursuant to the terms of this Agreement.

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

18. **Intentionally Left Blank.**

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

20. **Publicity.** Following the execution of this Agreement, the Parties may publish or use any publicity materials with respect to the execution, delivery, existence, or substance of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

21. **Confidentiality.**

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

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

21.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. Each Party shall use the other Party's Proprietary Information only in connection with this Agreement and in accordance with Applicable Law. In accordance with Section 222 of the Act, when either Party receives or obtains Proprietary Information from the other Party for purposes of providing any Telecommunications Services or information services or both, that Party shall use such information only for such purpose, and shall not use such information for its own marketing efforts. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. Violations of these obligations shall subject a Party's employees to disciplinary action up to and including termination of employment. If either Party loses, or makes an unauthorized disclosure of, the other Party's Proprietary Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

21.4 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the FCC and the appropriate state regulatory commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

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

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

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

21.8 Nothing in this Agreement shall prevent either Party from disclosing this Agreement or the substance thereof to any third party after its execution.

22. Waiver. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

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

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

25. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or

services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

26. Governing Law. This Agreement is offered by Qwest in accordance with Section 271 of the Act. Any issue of general contract law shall be interpreted solely in accordance with the state law of New York, without reference to any conflict of laws principles.

27. Dispute Resolution.

27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 27 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to any forum with competent jurisdiction. Nothing in this Section 23 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 27. Once a decision is reached by the arbitrator, however, such decision shall supersede any provisional remedy.

27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a director level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

27.3 If the director level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), then the Parties shall in good faith attempt to resolve the Dispute through vice-presidential representatives. If the vice-presidential representatives are unable to resolve the Dispute within thirty (30) Calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), then either Party may request that the Dispute be settled by arbitration. If either Party requests arbitration, the other Party shall be required to comply with that request and both Parties shall submit to binding arbitration of the

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Dispute as described in this Section. Notwithstanding the foregoing escalation timeframes, a Party may request that the Dispute of the type described in Section 27.3.1, below, be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the Telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver, Colorado metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party that sends the Resolution Request must notify the Secretary of the FCC of the arbitration proceeding within forty-eight (48) hours of the determination to arbitrate.

27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service-affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 27, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

27.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the arbitrator to an understanding and determination of the Dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the arbitrator. The arbitrator shall resolve any Disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

27.3.3 Arbitrator's Decision

27.3.3.1 The arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the arbitrator's findings of fact and conclusions of law.

27.3.3.2 An interlocutory decision and award of the arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a

forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the arbitrator shall remain in effect, but the enjoined Party may make an application to the arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

27.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 21 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide fifteen (15) calendar Days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

27.4 Reserved.

27.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

27.6 Reserved.

27.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

27.8 This Section does not apply to any claim, controversy or Dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation or use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

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

29. **Authorization.** Each Party represents and warrants that: (i) the full legal name of the legal entity intended to provide and receive the benefits and services under this Agreement is accurately set forth

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herein; (ii) the person signing this Agreement has been duly authorized to execute this Agreement on that Party's behalf; and (iii) the execution hereof is not in conflict with law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected. Each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

30. Third Party Beneficiaries. This Agreement will not provide any benefit or any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by explicit reference in this Agreement to any third party.

31. Insurance. Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from its operations for which that Party has assumed legal responsibility in this Agreement. If a Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 31, to the extent its affiliated Party fails to meet such obligations.

31.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

31.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

31.1.3 "All Risk" Property coverage on a full replacement cost basis insuring all of such Party's personal property situated on or within the Premises.

31.2 Each Party may be asked by the other to provide certificate(s) of insurance evidencing coverage, and thereafter shall provide such certificate(s) upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar Days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by such Party; and (4) acknowledge severability of interest/cross liability coverage.

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

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33. Entire Agreement.

33.1 This Agreement (including all Service Exhibits, Attachments, Rate Sheets, and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Agreement. Notwithstanding the foregoing, certain Network Elements and services used in combination with the QPP service provided under this Agreement are provided by Qwest to CLEC under the terms and conditions of ICAs and SGATs, where CLEC has opted into an SGAT as its ICA, and nothing contained herein is intended by the parties to amend, alter, or otherwise modify those terms and conditions.

34. Proof of Authorization.

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

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

35. General Terms for Network Elements

35.1 Qwest shall provide general repair and maintenance services on its facilities, including those facilities supporting Network Elements and QPP™ services purchased by CLEC under this Agreement, at a level that is consistent with other comparable services provided by Qwest.

35.2 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the Network Elements in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in Network Element transmission parameters that are within transmission limits of the Network Element ordered by CLEC. Qwest shall provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Qwest provides such disclosures on an Internet web site.

35.3 Miscellaneous Charges are defined in the Definitions Section. Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in the Rate Sheet. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges. Rates for Miscellaneous Charges are contained or referenced in the Rate Sheet. Unless otherwise provided for in this Agreement, no additional charges will apply.

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35.4 Network Security.

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

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

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

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

35.4.4.1 Qwest shall make available to CLEC, future fraud prevention or revenue protection features with QPP on a commercially reasonable basis. Presently, QPP fraud features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-976, 700 and 500 numbers.

35.4.4.2 If either Party becomes aware of potential fraud with respect to End User accounts, the Party shall promptly inform the other Party and, at the direction of that Party, take commercially reasonable action to mitigate the fraud where such action is possible.

35.5. Construction Charges. Qwest will provide necessary construction only to the extent required by applicable law.

35.6. Individual Case Basis Requests. CLEC may request additional Network Element or services not specified in this Agreement, and Qwest will consider such requests on an Individual Case Basis ("ICB").

36. Responsibility For Environmental Contamination

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36.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law..

36.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to CLEC by Qwest to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

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ADDENDUM 1 DEFINITIONS:

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

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

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

"Automatic Location Identification" or "ALI" is the automatic display at the Public Safety Answering Point of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

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

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

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

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

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

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

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

"Confidential Information" means information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary". Confidential information does not include information that: a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; b) is or becomes publicly known through no wrongful act of the receiving Party; c) is rightfully received from a third Person having no direct or indirect secrecy

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or confidentiality obligation to the disclosing Party with respect to such information; d) is independently developed without reference to or use of Confidential Information of the other Party; e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; f) is approved for release by written authorization of the disclosing Party; g) is required to be disclosed by the receiving Party pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

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

"Day" means calendar days unless otherwise specified.

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

"Directory Assistance Database" contains only those published and non-listed telephone number listings obtained by Qwest from its own End User Customers and other Telecommunications Carriers.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Listings" or "Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

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

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

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

"FCC" means the Federal Communications Commission.

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

"Line Information Database" or "LIDB" stores various telephone line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The

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operator services system accesses LIDB data to provide originating line (calling number), Billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, Billing or service restrictions and the sub-account information to be included on the call's Billing record. Telcordia's GR-446-CORE defines the interface between the administration system and LIDB including specific message formats (Telcordia's TR-NWP-000029, Section 10).

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine, computer, or similar customer device).

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

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

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in the rate sheet, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges shall be contained in or referenced in the rate sheet.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service or an information service or both. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service or an information service or both, as is more fully described in the Agreement.

"Operational Support Systems" or "OSS" mean pre-ordering, provisioning, maintenance, repair and billing systems.

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

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

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

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

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"POTS" means plain old telephone service.

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

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

"Proprietary Information" shall have the same meaning as Confidential Information.

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

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

"Service Exhibits" means the descriptions, terms, and conditions relating to specific Network Elements or services provided under this Agreement attached hereto as an exhibit.

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

"Shared Transport" is defined as local interoffice transmission facilities shared by more than one Carrier, including Qwest, between End Office Switches, between End Office Switches and Tandem Switches (local and Access Tandem Switches), and between Tandem Switches within the Local Calling Area, as described more fully in the Agreement.

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

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

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

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

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

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

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

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

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

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SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

SERVICE EXHIBIT 1 QWEST PLATFORM PLUS™ (QPP™) SERVICE

1.3 Local Switching

1.0 Qwest shall provide QPP™ service offerings according to the following terms and conditions. CLEC may use QPP™ services to provide any telecommunications services, information services, or both that CLEC chooses to offer.

1.1 General QPP™ Service Description

QPP™ services shall consist of the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable interconnection agreement or SGAT where CLEC has opted into an SGAT as its interconnection agreement (collectively, "ICAs") as the same existed on June 14, 2004. Qwest Advanced Intelligent Network (AIN) services (such as Remote Access Forwarding/Call Forwarding), Qwest Digital Subscriber Line (DSL), and Qwest Voice Messaging Services (VMS) may also be purchased with compatible QPP™ services. These Network Elements will be provided in compliance with all BellCore and other industry standards and technical and performance specifications and will allow CLEC to combine the QPP™ services with a compatible voicemail product and stutter dial tone. Access to 911 emergency services and directory listings will be provided by Qwest pursuant to the terms and conditions of CLEC's ICAs. As part of the QPP™ service, Qwest shall combine the Network Elements that make up QPP™ service with Analog/Digital Capable Loops, with such Loops (including services such as line splitting) being provided pursuant to the rates, terms and conditions of the CLEC's ICAs as described below.

QPP™ service shall be available in six different service arrangements, each of which is described more fully below: QPP™ Residential; QPP™ Business; QPP™ Centrex (including Centrex 21, Centrex Plus, and Centron in Minnesota only); QPP™ ISDN BRI; QPP™ PAL; and QPP™ PBX Analog DID and non-DID (one way and two way) trunks.

1.2 Combination of QPP™ Network Elements with Loops

The Loop will be provided by Qwest under the applicable ICAs in effect between Qwest and CLEC at the time the order is placed. As part of the QPP™ service, Qwest shall as described below combine the Local Switching and Shared Transport Network Elements with the Loop provided pursuant to the terms and conditions of CLEC's ICAs.

1.2.1 The following QPP™ service types will be combined with 2-wire loops: QPP™ Business; QPP™ Centrex (including Centrex 21, Centrex Plus, and Centron in Minnesota Only), QPP™ ISDN BRI; QPP™ PAL; QPP™ PBX Analog non-DID and 1-Way DID Trunks, and; QPP™ Residential.

1.2.2 The following QPP™ service type will be combined with 4 wire loops: QPP™ PBX Analog 2-Way DID Trunks.

The Local Switching Network Element of QPP™ service will be technically and functionally equivalent or superior to the Local Switching Network Element of the comparable UNE-P service provided by Qwest to CLEC under its ICAs as of June 14, 2004. The Local Switching Network Element of QPP™ service encompasses Line Side and Trunk Side facilities including without limitation the basic switching function, plus the features, functions, and all vertical features that are loaded in Qwest's End Office Switch. Vertical features are software attributes on End Office Switches and are listed in the PCAT.

Local Switching components include Analog Line Port, Digital Line Port Supporting BRI ISDN and Analog Trunk Ports.

1.3.1 Line Port attributes include but are not limited to: Telephone Number, Dial Tone, Signaling (Loop or ground start), On/Off Hook Detection, Audible and Power Ringing, Automatic Message Accounting (AMA Recording), and Blocking Options. Operator Services, and Directory Assistance are provided pursuant to the terms and conditions of CLEC's ICAs.

1.3.2 Digital Line Port Supporting BRI ISDN. Basic Rate Interface Integrated Services Digital Network (BRI ISDN) is a digital architecture that provides integrated voice and data capability (2 wire). A BRI ISDN Port is a Digital 2B+D (2 Bearer Channels for voice or data and 1 Delta Channel for signaling and D Channel Packet) Line Side Switch connection with BRI ISDN voice and data basic elements. For flexibility and customization, optional features can be added. BRI ISDN Port does not offer B Channel Packet service capabilities. The serving arrangement conforms to the internationally developed, published, and recognized standards generated by International Telegraph and Telephone Union (formerly CCITT).

1.3.3 Analog Trunk Port. DS0 Analog Trunk Ports can be configured as DID, DOD, and Two-way.

1.3.3.1 Analog Trunk Ports provide a 2-Way Analog Trunk with DID, E&M Signaling and 2-Wire or 4-Wire connections. This Trunk Side connection inherently includes hunting within the trunk group.

1.3.3.2 All trunks are designed as 4-Wire leaving the Central Office. For 2-Wire service, the trunks are converted at the End User Customer's location.

1.3.3.3 Two-way Analog DID Trunks are capable of initiating out going calls, and may be equipped with either rotary or Touch-tone (DTMF) for this purpose. When the trunk is equipped with DID Call Transfer feature, both the trunk and telephone instruments must be equipped with DTMF.

1.3.3.4 Two-way Analog DID Trunks require E&M signaling. Qwest will use Type I and II E&M signaling to provide these trunks to the PBX. Type II E&M signaling from Qwest to the PBX will be handled as a Special Assembly request Via ICB.

1.4 Vertical Features and Ancillary Functions and Services

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

1.4.1 QPP™ service includes nondiscriminatory access to all vertical features that are loaded in Qwest's End Office Switch.

1.4.2 The Local Switching Network Element of QPP™ includes Qwest's signaling network for traffic originated from the Port, including the use of Qwest's call-related databases. In conjunction with QPP™ service, Qwest will provide Qwest's Service Control Points in the same manner, and via the same signaling links, as Qwest uses such service Control Points and signaling links to provide service to its End User Customers from that Switch. Qwest's call related databases include the Line Information Database (LIDB), Internetwork Calling Name Database (ICNAM), 8XX Database for toll free calling, Advanced Intelligent Network Databases (AIN), and Local Number Portability Database. CLEC shall not have access to Qwest's AIN based services that qualify for proprietary treatment, except as expressly provided for in this Agreement.

1.4.3 ICNAM and LIDB. Qwest will provide CLEC with nondiscriminatory access to Qwest's LIDB database and ICNAM database as part of the delivery of QPP™ service.

1.4.4 The LIDB database is used to store various telephone line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The operator services system accesses LIDB data to provide originating line (calling number), Billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, Billing or service restrictions and the sub-account information to be included on the call's Billing record.

1.4.4.1 LIDB database provides information for use in processing Alternately Billed Services (ABS) calls including calling card, billed to third number, and collect calls.

1.4.5 The ICNAM database is used with certain End Office Switch features to provide the calling party's name to CLEC's End User Customer with the applicable feature capability. ICNAM database contains current listed name data by working telephone number served or administered by Qwest, including listed name data provided by other Telecommunications Carriers participating in Qwest's calling name delivery service arrangement.

1.4.5.1 Qwest will provide the listed name of the calling party that relates to the calling telephone number (when the information is actually available in Qwest's database and the delivery thereof is not blocked or otherwise limited by the calling party or other appropriate request).

1.4.5.2 For CLEC's QPP™ End User Customers, Qwest will load and update CLEC's QPP™ End User Customers' name information into the LIDB and ICNAM databases from CLEC's completed service orders. The process will be functionally equivalent to the process used for these databases with UNE-P as of June 14, 2004. CLEC is responsible for the accuracy of its End User Customers' information.

1.4.5.3 Qwest shall exercise reasonable efforts to provide accurate and complete LIDB and ICNAM information. The information is provided on an as-is basis

with all faults. Qwest does not warrant or guarantee the correctness or the completeness of such information; however, Qwest will access the same database for CLEC's QPP™ End User Customers as Qwest accesses for its End User Customers. In no event shall Qwest have any liability for system outage or inaccessibility or for losses arising from the authorized use of the data by CLEC.

1.4.5.4 There is no charge for the storage of CLEC's QPP™ End User Customers' information in the LIDB or ICNAM databases.

1.4.6 CLEC Branded Operator Services and Directory Assistance will be available to CLEC with QPP™ service and will be provided pursuant to the terms and conditions of CLEC's ICAs.

1.5 Shared Transport

1.5.1 Qwest shall provide the Shared Transport Network Element as part of the QPP™ service. Transport beyond Qwest's local interoffice network will be carried on Qwest's IntraLATA Toll network and provided by Qwest to CLEC only if CLEC chooses Qwest to provide IntraLATA Toll services for its QPP™ End User Customers. The existing routing tables resident in the Switch will direct both Qwest and CLEC traffic over Qwest's interoffice message trunk network.

1.5.1.1 Qwest does not authorize CLEC to offer Qwest the ILEC as a Local Primary Interexchange Carrier (LPIC) to its existing or new QPP™ End User Customers. Where CLEC assigns Qwest as LPIC 5123 to CLEC's existing or new QPP™ End User Customers, Qwest will bill CLEC at the rates contained or referenced in the attached Rate Sheet.

1.5.1.2 If, during the term of this Agreement, Qwest offers toll service to CLEC's QPP™ End User Customers, Qwest must establish its own Billing relationship with such QPP™ End User Customers. Qwest may not bill CLEC, and CLEC shall have no obligation to pay Qwest, for toll service Qwest provides to CLEC's QPP™ End User Customers. In addition, CLEC shall have no obligation to bill CLEC QPP™ End User Customers for toll service provided by Qwest.

1.5.2 Qwest will provide Shared Transport to carry originating access traffic from, and terminating to, CLEC QPP™ End User Customers. CLEC traffic will be carried on the same transmission facilities between End Office Switches, between End Office Switches and Tandem Switches, and between Tandem Switches in its network facilities that Qwest uses for its own traffic.

1.5.3 Shared Transport usage will be billed in accordance with the rates provided in The Rate Sheet.

1.6 QPP™ Service Arrangement Descriptions

1.6.1 QPP™ Business is available to CLEC for CLEC's business end users and is offered in the following combination: Analog Line Side Port and Shared Transport provided pursuant to this Agreement combined with Analog - 2 Wire Voice Grade Loop provided pursuant to CLEC's

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ICAs.

1.6.2 QPP™ Centrex is available to CLEC for CLEC's business end users. QPP™ Centrex services include Centrex 21, Centrex Plus, and Centron and is offered in the following combination: Analog Line Side Port and Shared Transport provided pursuant to this Agreement combined with an Analog - 2 Wire Voice Grade Loop provided pursuant to CLEC's ICAs.

1.6.2.1 CLEC may request a conversion from Centrex 21, Centrex-Plus or Centron service to QPP™ Business or QPP™ Residential.

1.6.2.2 Qwest will provide access to Customer Management System (CMS) with QPP™-Centrex at the rates set forth in the Rate Sheet.

1.6.3 QPP™ ISDN BRI is available to CLEC for CLEC's end user customers and is offered in the following combination: Digital Line Side Port (Supporting BRI ISDN), and Shared Transport provided pursuant to this Agreement combined with a Basic Rate ISDN Capable Loop provided pursuant to CLEC's ICAs.

1.6.4 QPP™ PAL is available to CLEC for CLEC's Payphone Service Providers (PSPs) and is offered in the following combination: Analog Line Side Port, and Shared Transport provided pursuant to this Agreement combined with Analog - 2 Wire Voice Grade Loop provided pursuant to CLEC's ICAs.. QPP™ PAL may only be ordered for and provisioned to Payphone Service Providers (PSPs).

1.6.5 QPP™ PBX is available to CLEC for CLEC's business End User Customers. QPP™ PBX will be offered in the following combinations:

1.6.6 PBX Analog non-DID Trunk combination consists of Analog Line Side Port and Shared Transport provided pursuant to this Agreement combined with Analog - 2 wire Voice Grade Loop provided pursuant to CLEC's ICAs.

1.6.7 PBX with Analog 1-Way DID Trunks combination consists of DID Trunk Port and Shared Transport provided pursuant to this Agreement combined with Analog - 2 wire Voice Grade Loop provided pursuant to CLEC's ICAs.

1.6.8 PBX with Analog 2- Way DID Trunks combination consists of DID Trunk Port and Shared Transport provided pursuant to this Agreement combined with Analog – 4 wire Voice Grade Loop provided pursuant to CLEC's ICAs.

1.6.9 QPP™ Residential is available to CLEC for CLEC's residential End User Customers and is offered in the following combination: Analog Line Side Port and Shared Transport provided pursuant to this Agreement combined with Analog - 2 Wire Voice Grade Loop provided pursuant to CLEC's ICAs. QPP™ Residential may only be ordered for and provisioned for residential end user application. The definition of residential service shall be the same as in Qwest's retail tariffs as applied to Qwest's End User Customers.

2.1 QPP™ services will be available only in Qwest's Incumbent Local Exchange Carrier service area within its fourteen-state region. QPP™ services will not be subject to any line limitations such as the Zone 1 four-line MSA restriction for unbundled switching. Qwest does not warrant the availability of facilities at any particular serving wire center, provided that Qwest warrants that CLEC shall be able to convert all CLEC UNE-P End User Customers as of the Effective Date to the QPP™ service. QPP™ services will not be available if facilities are not available. Notwithstanding the foregoing, Qwest represents and warrants that it will not otherwise restrict facilities eligible to provide QPP™ service and that any and all facilities that would otherwise be available for retail service to a Qwest End User Customer will be considered eligible for use by CLEC for QPP™ service to serve that same End User Customer.

2.2 Reserved.

2.3 This Agreement is not intended to change or amend existing intercarrier compensation arrangements between CLEC and Qwest. Nothing in this Agreement shall alter or affect CLEC's right to receive any applicable universal service subsidy or other similar payments.

2.3.1 Qwest shall provide to CLEC usage information within Qwest's control with respect to calls originated by or terminated to CLEC QPP™ End User Customers in the form of the actual information that is comparable to the information Qwest uses to bill its own End User Customers. Without limiting the generality of the foregoing, Qwest shall provide CLEC with the Daily Usage Feed billing information.

2.3.2 Qwest shall provide CLEC with usage information necessary for CLEC to bill for InterLATA and IntraLATA Exchange Access to the toll carrier (including Qwest where it is the toll carrier) in the form of either the actual usage or a negotiated or approved surrogate for this information. These Exchange Access records will be provided as Category 11 EMI records.

2.3.3 Qwest will provide DUF records for all usage billable to CLEC's QPP™ lines, including Busy Line Verify (BLV), Busy Line Interrupt (BLI), originating local usage, usage sensitive CLASS™ features, and Qwest-provided intraLATA toll. These records will be provided as Category 01 or Category 10 EMI records. Under this Agreement, terminating local usage records will not be provided. By agreeing to the foregoing, neither Party is foreclosed from advocating for the provision of local terminating records via an appropriate forum.

2.3.4 If CLEC chooses Qwest to provide IntraLATA Toll services for its QPP™ End User Customers, CLEC shall compensate Qwest for such services in accordance with the Rate Sheet.

2.4 QPP™ will include the capability for CLEC's End User Customers to choose their long distance service (InterLATA and IntraLATA) on a 2-PIC basis.

2.4.1 CLEC shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its End User Customers for InterLATA and IntraLATA services. CLEC shall follow all Applicable Laws, rules and regulations with

2.0 Additional Terms and Conditions and Service Features

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respect to PIC changes and Qwest disclaims any liability for CLEC's improper PIC change requests.

2.4.2 Feature and InterLATA or IntraLATA PIC changes or additions for QPP™, will be processed concurrently with the QPP™ order as specified by CLEC.

2.5 Access to 911/E911 emergency services for CLEC's End User Customers shall be available pursuant to the terms and conditions of CLEC's ICAs. If Qwest becomes no longer obligated to provide access to 911/E911 emergency services pursuant to 47 U.S.C. §251, then Qwest shall thereafter provide such services under this Agreement with respect to all CLEC QPP™ service End User Customers and new QPP™ service End User Customers, to the same degree and extent that such 911/E911 emergency services were provided by Qwest prior to the elimination of 911/E911 emergency services as an obligation under 47 U.S.C. §251.

2.6 Reserved.

2.7 Qwest AIN, Qwest Voice Messaging Services and Qwest DSL (dependent upon service compatibility and end office availability) are offered on a commercial basis and may be purchased with QPP™ at the rates set forth in the attached Rate Sheet. Retail promotions may not be combined with QPP™. Non-recurring charges associated with Qwest DSL™ are not subject to discount. CLEC may order new or retain existing Qwest DSL service for End User Customers when utilizing QPP™-POTS, QPP™-Centrex, and QPP™-PBX (analog, non-DID trunks only) combinations, where Technically Feasible. The price for Qwest DSL provided with QPP™ service is included in the Rate Sheet to this Agreement.

2.8 Qwest DSL host service is not available with QPP™ service.

2.9 If Qwest develops and deploys new local switch features for its End User Customers, those switch features will be available in the same areas and subject to the same limitations with QPP™ service. The rates to be charged CLEC for such new local switch features will be negotiated but will not in any case be higher than the retail rate Qwest charges.

2.10 CLEC shall have the ability to combine the QPP™ service with a compatible voicemail product and stutter dial tone.

3.0 Rates and Charges

3.1 The recurring ("MRC") and nonrecurring ("NRC") rates for QPP™ services and all applicable usage-based rates and miscellaneous charges (other than applicable intercarrier compensation charges such as access charges and reciprocal compensation and MRCs and NRCs for elements and services provided pursuant to CLEC's ICAs) are set forth in the attached Rate Sheets. The rates for QPP™ services set forth in the attached Rate Sheets will be in addition to the applicable rates for elements and services provided under CLEC's ICAs.

3.2 The loop element combined with a QPP™ service will be provided pursuant to CLEC's ICAs with Qwest at the rates set forth in those ICAs. To the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate

for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state (after giving effect to the QPP™ Port Rate Increases as adjusted for any applicable discount pursuant to Section 3.3 of this Service Exhibit) remains constant. The corresponding adjustment will be applied against the Port Rate Increases for the applicable state negotiated as a part of this Agreement and contained in the Rate Sheet. In no event shall any downward adjustment for a particular state under this section result in QPP™ Port Rate Increase of less than \$1.00, nor shall any upward adjustment for a particular state result in a QPP™ Port Rate Increase of more than twice the scheduled increase. If the monthly recurring rate for the loop is modified by a shift in zone designation the parties shall use the difference in the statewide average loop rate as the basis for such adjustment, if any. Nothing in this Agreement shall affect the rates or any other terms and conditions for loops set forth in CLEC's ICAs with Qwest. For purposes of this Agreement, the Port Rate Increases refer to the increases in the Port rate reflecting market pricing on the attached Rate Sheets.

Illustration 1: If the initial loop rate is \$15, the initial Port rate is \$3, and the scheduled Port Rate Increase is \$2 for residential and \$3 for business, an increase in the loop rate of \$1.50 to \$16.50 will result in a corresponding reduction of the Port Rate Increase for residential to \$1.00 (calculated: \$2.00 - \$1.50, but in no event less than \$1.00) and a reduction of the Port Rate Increase for business of \$1.50 (calculated: \$3.00 - \$1.50).

Illustration 2: If the initial loop rate is \$15, the initial Port rate is \$3, and the scheduled Port Rate Increase is \$2 for residential and \$3 for business, a decrease in the loop rate of \$2.50 to \$12.50 will result in a corresponding upward adjustment of the Port Rate Increase for residential to \$4.00 (calculated: \$2.00 plus \$2.50, but in no event greater than 2 X \$2.00) and an upward adjustment of the Port Rate Increase for business to \$5.50 (calculated: \$3.00 plus \$2.50).

3.3 Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to CLEC's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™ Port Rate Increase (as the same may be subsequently adjusted under Section 3.2) on January 1, 2005, January 1, 2006 and January 1, 2007. If the Batch Hot Cut Process has not been implemented in a particular state such that Qwest is not able to process Batch Hot Cuts in that state by December 31, 2004, the QPP™ Port Rate Increases for that state will not go into effect until such time as Qwest is able to process Batch Hot Cut orders in that state, and in the event of any such delay in the effective date of the QPP™ Port Rate increases, there shall be no subsequent true up of the QPP™ Port Rate Increases. If the number of CLEC's QPP™ lines as of October 31, 2005 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2004, CLEC will be entitled to a discount off of the monthly recurring switch port rate applicable during calendar year 2006 equal to 10% of the QPP™ Port Rate Increases that take effect January 1, 2006. If the number of CLEC's QPP™ lines as of October 31, 2006 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2005, CLEC will be entitled

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to a discount off of the monthly recurring switch port rate applicable during calendar year 2007 equal to 10% of the QPP™ Port Rate Increases that take effect January 1, 2007. For purposes of this section, the number of QPP™ lines and the sum of QPP™ service and UNE-P lines shall be calculated on a regionwide basis that includes all states in which this Agreement is in effect.

- 3.4** CLEC shall be responsible for Billing its End User Customers served via QPP™ for all Miscellaneous Charges and surcharges required of CLEC by statute, regulation or otherwise required.
- 3.5** CLEC shall pay Qwest the PIC change charge associated with CLEC End User Customer changes of InterLATA or IntraLATA Carriers. Any change in CLEC's End User Customers' InterLATA or IntraLATA Carrier must be requested by CLEC on behalf of its End User Customer.
- 3.6** If an End User Customer is served by CLEC through a QPP™ service, Qwest will not charge, assess, or collect Switched Access charges for InterLATA or IntraLATA calls originating or terminating from that End User Customer's phone.
- 3.7** Qwest shall have a reasonable amount of time to implement system or other changes necessary to bill CLEC for rates or charges associated with QPP™ services. Such system or other changes must be completed and operational no later than December 31, 2004.
- 3.8** QPP™ services have a one month minimum service period requirement for each CLEC End User Customer. The one month minimum service period is the period of time that CLEC is required to pay 100% of the monthly recurring price for the service even if CLEC does not retain service for the entire month. QPP™ services are billed month to month and shall after the one month minimum service period is satisfied be pro-rated for partial months based on the number of days service was provided.
- 3.9** To receive QPP™ Residential rates, CLEC must identify residential end users by working telephone number (WTN) via LSR as described in the QPP™ PCAT. Qwest will not assess a nonrecurring charge for the processing of this records order to identify the installed base of UNE-P residential end users. Following submission by CLEC of such LSRs, CLEC and Qwest shall cooperate to ensure that appropriate updates are reflected in Qwest's billing systems. QPP™ Business rates will apply to all WTNs not specifically identified as QPP™ Residential. Changes to the LSR process intended to implement the residential identifier for new orders going forward shall be implemented through the Change Management Process.

3.9.1 To receive QPP™ Residential rates with an Effective Billing Date (EBD) of January 1, 2005, CLEC must identify their existing UNE-P residential end users by working telephone number (WTN) via LSR as described in the QPP™ PCAT by April 1, 2005. On April 1, 2005, Qwest will apply QPP™ Business rates, with an EBD of January 1, 2005, to all WTNs that were in service during this period. For those WTNs identified as residential end users on or before April 1, 2005, Qwest will process a one-time credit per WTN, per month for the period of time that the WTN was in service between January 1, 2005 and April 1, 2005. This one-time credit will be processed on one Billing Account

Number (BAN) per state. CLEC waives any right to past credits or discounts related to residential end users that were not so identified by April 1, 2005. After April 1, 2005, only WTNs identified as residential end users will be billed Residential rates (via the Residential End User Credit provided in the Rate Sheet).

3.9.2 To receive QPP™ rates on WTNs previously provided pursuant to terms, conditions, and prices of UNE-E, Eschelon will submit to Qwest LSRs to change the WTNs to the appropriate QPP™ Class of Service and Line USOC, by April 1, 2005. Qwest will not assess a nonrecurring charge for the processing of LSRs that are limited to changing a UNE-E Class of Service and Line USOC to the equivalent QPP Class of Service and Line USOC. For LSRs involving additional activity that is not related to identifying the service as QPP, the Subsequent Order Charge provided in the QPP Rate Sheet will be applicable per order. Any UNE-E WTNs not changed by Eschelon to QPP™ by April 1, 2005 will be converted by Qwest to the equivalent, month to month Resale service and manual Resale Customer Transfer Charges (CTCs) will be applied.

- 3.10** The subsequent order charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing or changing features, and other similar requests.

4.0 Systems and Interfaces

- 4.1** Qwest and CLEC shall continue to support use of existing UNE-P OSS interfaces and current OSS business rules for QPP™ (including without limitation electronic ordering and flowthrough applicable to UNE-P on June 14, 2004) as the same may evolve over time.
- 4.2** QPP™ products and services are ordered via an LSR as described in the PCAT. Products and Services Ordering are found on the Qwest wholesale website.
- 4.3** 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 as set forth in this Agreement.
- 4.4** When Qwest or another provider of choice, at the End User Customer's request, orders the discontinuance of the End User Customer's existing service with CLEC, Qwest will render its closing bill to CLEC effective with the disconnection. Qwest will notify CLEC by FAX, OSS interface, or other agreed upon processes when an End User Customer moves to Qwest or another service provider. Qwest shall not provide CLEC or Qwest retail personnel with the name of the other service provider selected by the End User Customer.
- 4.5** CLEC shall provide Qwest and Qwest shall provide CLEC with points of contact for order entry, problem resolution, repair, and in the event special attention is required on service request.

5.0 Billing

Qwest shall provide CLEC, on a monthly basis, within seven

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to ten (7 – 10) calendar days of the last day of the most recent Billing period, in an agreed upon standard electronic format, Billing information including (1) a summary bill, and (2) individual End User Customer sub-account information. To the extent CLEC needs additional or different billing information in order to properly bill its End Users or other Carriers (including without limitation Qwest), Qwest shall work with CLEC in good faith to deliver such information.

6.0 Maintenance and Repair

6.1 Qwest will maintain facilities and equipment that comprise the QPP™ service provided to CLEC. 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 written consent of Qwest.

6.2 Qwest shall provide general repair and maintenance services on its facilities, including those facilities supporting QPP™ services purchased by CLEC. Without limiting the generality of the foregoing, Qwest shall repair and restore any equipment or any other maintainable component that may adversely impact CLEC's use of QPP™ service. Qwest and CLEC shall cooperate with each other to implement procedures and processes for handling service-affecting events. There shall be no charge for the services provided under this section except as set forth in the Rate Sheet.

7.0 Performance Measures and Reporting, Performance Targets and Service Credits

7.1 Each party shall provide suitably qualified personnel to perform its obligations under this Agreement and all QPP™ services hereunder in a timely and efficient manner with diligence and care, consistent with the professional standards of practice in the industry, and in conformance with all applicable laws and regulations. The QPP™ service attributes and process enhancements are not subject to the Change Management Process ("CMP"). CLEC proposed changes to QPP™ service attributes and process enhancements will be communicated through the standard account interfaces. Change requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

7.2 Qwest will provide commercial performance measurements and reporting against established performance targets with QPP™ service. The following performance measurements will apply to QPP™ Residential and QPP™ Business: (a) Firm Order Confirmations (FOCs) On Time, (b) Installation Commitments Met, (c) Order Installation Interval, (d) Out of Service Cleared within 24 Hours, (e) Mean Time to Restore, and (f) Trouble Rate. Commercial measurement definitions, methodologies, performance targets and reporting requirements are attached as Attachment A. Qwest will provide CLEC with the raw data necessary to allow CLEC to disaggregate results at the state level.

7.3 CLEC will be entitled to service credits only for each instance of a missed installation commitment and each instance of an out of service condition that is not cleared within 24 hours as described below. All such service credits shall be applied automatically by Qwest as credit against CLEC's bill for the billing period following the one in which the credits were accrued.

7.3.1 Installation Commitments Met. For each installation commitment that Qwest, through its own fault, fails to meet, Qwest will provide a service credit equal to 100% of the nonrecurring charge for that installation. The definition of a "missed installation commitment" and the associated exclusions are described in Attachment A.

7.3.2 Out of Service Cleared within 24 Hours. For each out-of-service condition that Qwest, through its own fault, fails to resolve within 24 hours, Qwest will provide a service credit equal to one day's recurring charge (monthly recurring charge divided by 30) for each day out of service beyond the first 24 hours. (For example, if the out-of-service condition exists for 25 to 47 hours, CLEC would be entitled to a credit equal to the monthly recurring charge divided by 30. If the out-of-service condition existed for 48 to 71 hours, the credit would equal two times the monthly recurring charge divided by 30).. The definition of an "out of service condition" and the associated exclusions are described in Attachment A.

Attachment A to Service Exhibit 1
Performance Targets for Qwest QPP Service

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FOC-1 – Firm Order Confirmations (FOCs) On Time

<p>Purpose: Monitors the timeliness with which Qwest returns Firm Order Confirmations (FOCs) to CLECs in response to LSRs received from CLECs, focusing on the degree to which FOCs are provided within specified intervals.</p>	
<p>Description: Measures the percentage of Firm Order Confirmations (FOCs) that are provided to CLECs within the intervals specified under “Performance Targets” below for FOC notifications.</p> <ul style="list-style-type: none"> Includes all LSRs that are submitted through IMA-GUI and IMA-EDI interfaces that receive an FOC during the reporting period, subject to exclusions specified below. (Acknowledgments sent separately from an FOC (e.g., EDI 997 transactions are not included.) For FOC-1A, the interval measured is the period between the LSR received date/time (based on scheduled up time) and Qwest’s response with a FOC notification (notification date and time). For FOC-1B, the interval measured is the period between the application date and time, as defined herein, and Qwest’s response with a FOC notification (notification date and time). “Fully electronic” LSRs are those (1) that are received via IMA-GUI or IMA-EDI, (2) that involve no manual intervention, and (3) for which FOCs are provided mechanically to the CLEC. “Electronic/manual” LSRs are received electronically via IMA-GUI or IMA-EDI and involve manual processing. <ul style="list-style-type: none"> LSRs will be evaluated according to the FOC interval categories shown in the “Performance Targets” section below, based on the number of lines requested on the LSR or, where multiple LSRs from the same CLEC are related, based on the combined number of lines requested on the related LSRs. 	
<p>Reporting Period: One month</p>	<p>Unit of Measure: Percent</p>
<p>Reporting: Individual CLEC</p>	<p>Disaggregation Reporting: Regional level.</p> <ul style="list-style-type: none"> FOC-1A: FOCs provided for fully electronic LSRs received via IMA-GUI or IMA-EDI FOC-1B: FOCs provided for electronic/manual LSRs received via IMA-GUI or IMA-EDI
<p>Formula: FOC-1A = {[Count of LSRs for which the original FOC’s “(FOC Notification Date & Time) - (LSR received date/time (based on scheduled up time))” is within 20 minutes] ÷ (Total Number of original FOC Notifications transmitted for the service category in the reporting period)} x 100</p> <p>FOC-1B = {[Count of LSRs for which the original FOC’s “(FOC Notification Date & Time) - (Application Date & Time)” is within the intervals specified for the service category involved] ÷ (Total Number of original FOC Notifications transmitted for the service category in the reporting period)} x 100</p>	

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Exclusions:		
<ul style="list-style-type: none"> LSRs involving individual case basis (ICB) handling based on quantities of lines, as specified in the "Performance Targets" section below, or service/request types, deemed to be projects. Hours on Weekends and holidays. (Except for FOC-1A, which only excludes hours outside the scheduled system up time.) LSRs with CLEC-requested FOC arrangements different from standard FOC arrangements. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.) Invalid start/stop dates/times. 		
Product Reporting: QPP-POTS	Performance Target:	
	<u>FOC-1A</u>	95% within 20 minutes
	<u>FOC-1B</u>	95% within standard FOC intervals (specified below)
	Standard FOC Intervals	
	Product Group ^{NOTE 1}	FOC Interval
	QPP-POTS (1-39 lines)	24 hrs
Availability:		
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.		
	Notes: 1. LSRs with quantities above the highest number specified for each product type are considered ICB.	

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ICM-1 - Installation Commitments Met

Purpose: Evaluates the extent to which Qwest installs services for Customers by the scheduled due date.	
Description: Measures the percentage of orders for which the scheduled due date is met. <ul style="list-style-type: none"> All inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period are measured, subject to exclusions specified below. Change order types included in this measurement consist of all C orders representing inward activity (with "I" and "T" action coded line USOCs). Also included are orders with customer-requested due dates longer than the standard interval. Completion date on or before the Applicable Due Date recorded by Qwest is counted as a met due date. The Applicable Due Date is the original due date or, if changed or delayed by the customer, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the customer-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any. 	
Reporting Period: One month	Unit of Measure: Percent
Reporting: Individual CLEC	Disaggregation Reporting: Regional level. <ul style="list-style-type: none"> Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: ICM-1A Dispatches (Includes within MSA and outside MSA); and ICM-1B No dispatches. Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: ICM-1C Interval Zone 1 and Interval Zone 2 areas.
Formula: $\left[\frac{\text{Total Orders completed in the reporting period on or before the Applicable Due Date}}{\text{Total Orders Completed in the Reporting Period}} \right] \times 100$	
Exclusions: <ul style="list-style-type: none"> Disconnect, From (another form of disconnect) and Record order types. Due dates missed for standard categories of customer and non-Qwest reasons. Standard categories of customer reasons are: previous service at the location did not have a customer-requested disconnect order issued, no access to customer premises, and customer hold for payment. Standard categories of non-Qwest reasons are: Weather, Disaster, and Work Stoppage. Records involving official company services. Records with invalid due dates or application dates. Records with invalid completion dates. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. 	

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Product Reporting		Performance Target:	
MSA-Type:			
QPP-POTS		QPP-POTS (Dispatch and No Dispatch)	95%
Zone-Type:			
Availability:	Notes:		
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.			

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 UT Agreement No. CDS-050124-0008
 WA Agreement No. CDS-050124-0009

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OII-1 - Order Installation Interval

<p>Purpose: Evaluates the timeliness of Qwest's installation of services for CLECs, focusing on the average time to install service.</p>	
<p>Description: Measures the average interval (in business days) between the application date and the completion date for service orders accepted and implemented.</p> <ul style="list-style-type: none"> Includes all inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period, subject to exclusions specified below. Change order types for additional lines consist of all C orders representing inward activity. Intervals for each measured event are counted in whole days: the application date is day zero (0); the day following the application date is day one (1). The Applicable Due Date is the original due date or, if changed or delayed by the CLEC, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the CLEC-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any. ^{NOTE 1} Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date, as applied in the formula below, are calculated by subtracting the latest Qwest-initiated due date, if any, following the Applicable Due Date, from the subsequent CLEC-initiated due date, if any. ^{NOTE 1} 	
<p>Reporting Period: One month</p>	<p>Unit of Measure: Average Business Days</p>
<p>Reporting: Individual CLEC</p>	<p>Disaggregation Reporting: Regional level.</p> <ul style="list-style-type: none"> Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: OII-1A Dispatches (Includes within MSA and outside MSA); and OII-1B No dispatches. Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: OII-1C Interval Zone 1 and Interval Zone 2 areas.
<p>Formula: $\frac{\sum[(\text{Order Completion Date}) - (\text{Order Application Date}) - (\text{Time interval between the Original Due Date and the Applicable Date}) - (\text{Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date})]}{\text{Total Number of Orders Completed in the reporting period}}$ </p> <p>Explanation: The average installation interval is derived by dividing the sum of installation intervals for all orders (in business days) by total number of service orders completed in the reporting period.</p>	
<p>Exclusions:</p> <ul style="list-style-type: none"> Orders with CLEC requested due dates greater than the current standard interval. Disconnect, From (another form of disconnect) and Record order types. Records involving official company services. Records with invalid due dates or application dates. Records with invalid completion dates. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. Orders involving individual case basis (ICB) handling based on quantities of lines or orders deemed to be projects. 	

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Product Reporting:		
MSA-Type -		Reported As:
QPP-POTS		Average business days
Zone-Type -		
Performance Target:		
QPP-POTS (Dispatched)		6 Days
QPP-POTS (No Dispatch)		3.5 Days
Availability:	Notes:	
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.	<ol style="list-style-type: none"> 1. According to this definition, the Applicable Due Date can change, per successive CLEC-initiated due date changes or delays, up to the point when a Qwest-initiated due date change occurs. At that point, the Applicable Due Date becomes fixed (i.e., with no further changes) as the date on which it was set prior to the first Qwest-initiated due date change, if any. Following the first Qwest-initiated due date change, any further CLEC-initiated due date changes or delays are measured as time intervals that are subtracted as indicated in the formula. These delay time intervals are calculated as stated in the description. (Though infrequent, in cases where multiple Qwest-initiated due date changes occur, the stated method for calculating delay intervals is applied to each pair of Qwest-initiated due date change and subsequent CLEC-initiated due date change or delay. The intervals thus calculated from each pairing of Qwest and CLEC-initiated due dates are summed and then subtracted as indicated in the formula.) The result of this approach is that Qwest-initiated impacts on intervals are counted in the reported interval, and CLEC-initiated impacts on intervals are not counted in the reported interval. 	

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OOS24-1 - Out of Service Cleared within 24 Hours

Purpose: Evaluates timeliness of repair for specified services, focusing on trouble reports where the out-of-service trouble reports were cleared within the standard estimate for specified services (i.e., 24 hours for out-of-service conditions).	
Description: Measures the percentage of out of service trouble reports, involving specified services, that are cleared within 24 hours of receipt of trouble reports from CLECs or from retail customers. <ul style="list-style-type: none"> Includes all trouble reports, closed during the reporting period, which involve a specified service that is out-of-service (i.e., unable to place or receive calls), subject to exclusions specified below. Time measured is from date and time of receipt of trouble ticket to the date and time trouble is indicated as cleared. 	
Reporting Period: One month	Unit of Measure: Percent
Reporting: Individual CLEC	Disaggregation Reporting: Regional level. <ul style="list-style-type: none"> Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: OOS24-1A Dispatches (Includes within MSA and outside MSA); and OOS24-1B No dispatches. Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: OOS24-1C Interval Zone 1 and Interval Zone 2 areas.
Formula: $\left[\frac{\text{Number of Out of Service Trouble Reports closed in the reporting period that are cleared within 24 hours}}{\text{Total Number of Out of Service Trouble Reports closed in the reporting period}} \right] \times 100$	
Exclusions: <ul style="list-style-type: none"> Trouble reports coded as follows: <ul style="list-style-type: none"> For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider). For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE). Subsequent trouble reports of any trouble before the original trouble report is closed. Information tickets generated for internal Qwest system/network monitoring purposes. Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation". For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay. Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete. Records involving official company services. Records with invalid trouble receipt dates. Records with invalid cleared or closed dates. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. 	

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Product Reporting:		Performance Targets:	
MSA-Type -			
• QPP POTS		Dispatch and Non-Dispatch	90%
Zone-Type -			
Availability:	Notes:		
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.			

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MTTR-1 - Mean Time to Restore

Purpose: Evaluates timeliness of repair, focusing how long it takes to restore services to proper operation.	
Description: Measures the average time taken to clear trouble reports. <ul style="list-style-type: none"> Includes all trouble reports closed during the reporting period, subject to exclusions specified below. Includes customer direct reports, customer-relayed reports, and test assist reports that result in a trouble report. Time measured is from date and time of receipt to date and time trouble is cleared. 	
Reporting Period: One month	Unit of Measure: Hours and Minutes
Reporting: Individual CLEC	Disaggregation Reporting: Regional level. <ul style="list-style-type: none"> Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: <ul style="list-style-type: none"> MTTR-1A Dispatches (Includes within MSA and outside MSA); and MTTR-1B No dispatches. Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: <ul style="list-style-type: none"> MTTR-1C Interval Zone 1 and Interval Zone 2 areas.
Formula: $\frac{\sum[(\text{Date \& Time Trouble Report Cleared}) - (\text{Date \& Time Trouble Report Opened})]}{(\text{Total number of Trouble Reports closed in the reporting period})}$	
Exclusions: <ul style="list-style-type: none"> Trouble reports coded as follows: <ul style="list-style-type: none"> For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider). For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test OK (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE). Subsequent trouble reports of any trouble before the original trouble report is closed. Information tickets generated for internal Qwest system/network monitoring purposes. Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation". For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay. Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete. Records involving official company services. Records with invalid trouble receipt dates. Records with invalid cleared or closed dates. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. 	

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Product Reporting:		Performance Target:	
MSA-Type – QPP-POTS		QPP-POTS (No Dispatch)	5 Hours
		QPP-POTS (Dispatched)	14 Hours
Zone-Type -			
•			
Availability:		Notes:	
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.			

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TR-1 - Trouble Rate

Purpose: Evaluates the overall rate of trouble reports as a percentage of the total installed base of the service or element.	
Description: Measures trouble reports by product and compares them to the number of lines in service. <ul style="list-style-type: none"> • Includes all trouble reports closed during the reporting period, subject to exclusions specified below. • Includes all applicable trouble reports, including those that are out of service and those that are only service-affecting. 	
Reporting Period: One month	Unit of Measure: Percent
Reporting: Individual CLEC	Disaggregation Reporting: Regional level.
Formula: $[(\text{Total number of trouble reports closed in the reporting period involving the specified service grouping}) \div (\text{Total number of the specified services that are in service in the reporting period})] \times 100$	
Exclusions: <ul style="list-style-type: none"> • Trouble reports coded as follows: <ul style="list-style-type: none"> – For products measured from MTAS data (products listed for MSA-type, trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider). – For products measured from WFA (Workforce Administration) data (products listed for Zone-type) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE). • Subsequent trouble reports of any trouble before the original trouble report is closed. • Information tickets generated for internal Qwest system/network monitoring purposes. • Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type". • For products measured from MTAS data (products listed for MSA-type, trouble reports involving a "no access" delay.) • Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete. • Records involving official company services. • Records with invalid trouble receipt dates. • Records with invalid cleared or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 	

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Product Reporting:	Performance Target:
MSA Type:	
• QPP-POTS	Diagnostic
Zone Type:	
•	
Availability:	Notes:
Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.	

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Qwest Platform Plus™ (QPP™) Rate Sheet - Arizona

	USOC	Recurring	Non-Recurring	Notes
109.8 Shared Transport Purchased As Part of QPP™				
109.8.1 Mass Market				
109.8.1.1 QPP™ Residential, Business, and PAL (Per MOU)		\$0.0008236		
109.8.1.2 QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.26		
109.11 Local Switching Purchased As Part of QPP™				
109.11.1 Mass Market Switching				
109.11.1.1 Ports				
109.11.1.1.1 Ports, Effective through December 31, 2004				
109.11.1.1.1.1 Analog Port		\$2.44		
109.11.1.1.1.2 Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3 Digital Port (Supporting BRI ISDN)		\$10.38		
109.11.1.1.1.4 PBX DID Port		\$3.32		
109.11.1.1.2 Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1 Analog Port		\$5.14		
109.11.1.1.2.2 Analog Port, Residential end user credit		(\$1.14)		1
109.11.1.1.2.3 Digital Port (Supporting BRI ISDN)		\$13.08		
109.11.1.1.2.4 PBX DID Port		\$6.02		
109.11.1.1.3 Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1 Analog Port		\$6.79		
109.11.1.1.3.2 Analog Port, Residential end user credit		(\$2.46)		1
109.11.1.1.3.3 Digital Port (Supporting BRI ISDN)		\$14.73		
109.11.1.1.3.4 PBX DID Port		\$7.67		
109.11.1.1.4 Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1 Analog Port		\$7.27		
109.11.1.1.4.2 Analog Port, Residential end user credit		(\$2.73)		1
109.11.1.1.4.3 Digital Port (Supporting BRI ISDN)		\$15.21		
109.11.1.1.4.4 PBX DID Port		\$8.15		
109.11.1.1.5 Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1 Analog Port		\$8.70		
109.11.1.1.5.2 Analog Port, Residential end user credit		(\$4.10)		1
109.11.1.1.5.3 Digital Port (Supporting BRI ISDN)		\$16.64		
109.11.1.1.5.4 PBX DID Port		\$9.58		
109.11.1.1.6 Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1 Analog Port		\$9.40		
109.11.1.1.6.2 Analog Port, Residential end user credit		(\$4.56)		1
109.11.1.1.6.3 Digital Port (Supporting BRI ISDN)		\$17.34		
109.11.1.1.6.4 PBX DID Port		\$10.28		
109.11.1.2 Local Switch Usage				
109.11.1.2.1 QPP™ Residential, Business, and PAL (Per MOU)		\$0.00097		
109.11.1.2.2 QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$0.81000		
109.11.1.3 Switch Features				2, 3
109.11.1.3.1 Account Codes - per system	AZ8PS		\$78.60	
109.11.1.3.2 Attendant Access Line - per station line	DZR		\$1.14	
109.11.1.3.3 Audible Message Waiting	MGN, MWW		\$0.99	
109.11.1.3.4 Authorization Codes - per system	AFYPS		\$235.06	
109.11.1.3.5 Automatic Line	ETVPB		\$0.34	
109.11.1.3.6 Automatic Route Selection - Common Equip. per system	F5GPG		\$2,062.41	
109.11.1.3.7 Call Drop	NA-FID		\$0.34	
109.11.1.3.8 Call Exclusion - Automatic	NXB (ISDN)		\$0.99	
109.11.1.3.9 Call Exclusion - Manual	NA-FID (ISDN)		\$0.66	
109.11.1.3.10 Call Forwarding Don't Answer - Incoming Only	69A		\$37.25	
109.11.1.3.11 Call Forwarding: Busy Line / Don't Answer Programmable Svc. Establishment	SEPFA		\$15.39	
109.11.1.3.12 Call Forwarding: Busy Line/Don't Answer (Expanded)	FVJ, FVJHG		\$37.25	
109.11.1.3.13 Call Forwarding: Don't Answer	69H, EVD, EVDHG		\$37.25	
109.11.1.3.14 Call Forwarding: Don't Answer / Call Forward Busy Customer Programmable-Per Line	FSW		\$0.99	
109.11.1.3.15 Call Waiting Indication - per timing state	WUT		\$0.99	
109.11.1.3.16 Centrex Common Equipment	HYE, HYS		\$1,184.89	
109.11.1.3.17 CLASS - Call Trace, Per Occurrence	NO USOC		\$2.35	
109.11.1.3.18 CLASS - Continuous Redial	NSS		\$1.24	
109.11.1.3.19 CLASS - Last Call Return	NSQ		\$1.25	
109.11.1.3.20 CLASS - Priority Calling	NSK		\$1.18	
109.11.1.3.21 CLASS - Selective Call Forwarding	NCE		\$1.24	
109.11.1.3.22 CLASS - Selective Call Rejection	NSY		\$1.18	
109.11.1.3.23 CMS - Packet Control Capability, per System	PTGPS		\$477.21	
109.11.1.3.24 CMS - System Establishment - Initial Installation	MB5XX		\$954.41	
109.11.1.3.25 CMS - System Establishment - Subsequent Installation	CPVWO		\$477.21	
109.11.1.3.26 Conference Calling - Meet Me	MJJPk		\$41.72	

Qwest Platform Plus™ (QPP™) Rate Sheet - Arizona

		USOC	Recurring	Non-Recurring	Notes
109.11.1.3.27	Conference Calling - Preset	MO9PK		\$41.72	
109.11.1.3.28	Direct Station Select / Busy Lamp Field per arrangement	BUD		\$0.34	
109.11.1.3.29	Directed Call Pickup with Barge-in	6MD		\$19.81	
109.11.1.3.30	Directed Call Pickup without Barge-in	69D		\$19.81	
109.11.1.3.31	Distinctive Ring/Distinctive Call Waiting	RNN		\$39.60	
109.11.1.3.32	Expensive Route Warning Tone- per system with ARS	AQWPS		\$70.64	
109.11.1.3.33	Facility Restriction Level - per system	FRKPS		\$43.46	
109.11.1.3.34	Group Intercom	GCN		\$0.45	
109.11.1.3.35	Hot Line - per line	HLA, HLN		\$0.99	
109.11.1.3.36	Hunting: Multiposition Hunt Queuing	MHS		\$37.90	
109.11.1.3.37	Hunting: Multiposition with Announcement in Queue	MHW		\$37.90	
109.11.1.3.38	Hunting: Multiposition with Music in Queue	MOHPS		\$40.03	
109.11.1.3.39	ISDN Short Hunt	NHGP		\$1.67	
109.11.1.3.40	Loudspeaker Paging - per trunk group	PTQPG		\$173.41	
109.11.1.3.41	Make Busy Arrangements - per group	A9AEX, P89		\$0.66	
109.11.1.3.42	Make Busy Arrangements - per line	MB1		\$0.66	
109.11.1.3.43	Message Center - per main station line	MFR		\$0.34	
109.11.1.3.44	Message Waiting Visual	MV5		\$0.34	
109.11.1.3.45	Music On Hold - per system	MHHPS		\$22.72	
109.11.1.3.46	Privacy Release	K7KPK		\$0.47	
109.11.1.3.47	Query Time	QT1PK		\$0.34	
109.11.1.3.48	SMDR-P - Archived Data	SR7CX		\$174.16	
109.11.1.3.49	SMDR-P - Service Establishment Charge, Initial Installation	SEPS, SEPSR		\$333.29	
109.11.1.3.50	Station Camp-On Service - per main station	CPK		\$0.34	
109.11.1.3.51	Time of Day Control for ARS - per system	ATBPS		\$123.60	
109.11.1.3.52	Time of Day NCOS Update with ARS	A4T		\$0.53	
109.11.1.3.53	Time of Day Routing - per line with ARS	ATB		\$0.51	
109.11.1.3.54	Trunk Verification from Designated Station	BVS		\$0.39	
109.11.1.3.55	UCD in hunt group - per line	MHM, H6U, NZT		\$0.66	
109.11.1.4	Other				
109.11.1.4.1	Custom Number		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.11.1.4.3	PBX DID Complex Translations Digits Outpulsed Change Signaling			\$14.30	
109.11.1.4.4	PBX DID Block Compromise			\$25.18	
109.11.1.4.5	PBX DID Group of 20 Numbers			\$33.50	
109.11.1.4.6	PBX DID Reserve Sequential # Block			\$25.03	
109.11.1.4.7	PBX DID Reserve Non Sequential TN			\$23.37	
109.11.1.4.8	PBX DID NonSequential TN			\$35.15	
109.11.2	Subsequent Order Charge	NHCUU		\$13.33	4
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.20	Miscellaneous Charges				5, 6
109.20.1	Non-Design				
109.20.1.1	Trouble Isolation Charge (TIC)	LTESX		See Maintenance of Service, Basic, First Interval	
109.20.1.2	Network Premises Work Charge				
109.20.1.2.1	Basic				
109.20.1.2.1.1	First Increment	HRH11		See Additional Labor - Other	
109.20.1.2.1.2	Each Additional Increment	HRHA1			
109.20.1.2.2	Overtime				
109.20.1.2.2.1	First Increment	HRH12		See Additional Labor - Other	
109.20.1.2.2.2	Each Additional Increment	HRHA2			
109.20.1.2.3	Premium				
109.20.1.2.3.1	First Increment	HRH13		See Additional Labor - Other	
109.20.1.2.3.2	Each Additional Increment	HRHA3			
109.20.2	Design				
109.20.2.1	Maintenance of Service				
109.20.2.1.1	Basic				
109.20.2.1.1.1	First Increment	MVWXX		See Maintenance of Service	
109.20.2.1.1.2	Each Additional Increment	MVW1X			
109.20.2.1.2	Overtime				
109.20.2.1.2.1	First Increment	MVWOX		See Maintenance of Service	
109.20.2.1.2.2	Each Additional Increment	MVW2X			
109.20.2.1.3	Premium				
109.20.2.1.3.1	First Increment	MVWPX		See Maintenance of Service	
109.20.2.1.3.2	Each Additional Increment	MVW3X			

Qwest Platform Plus™ (QPP™) Rate Sheet - Arizona

		USOC	Recurring	Non-Recurring	Notes
109.20.2.2	Optional Testing (Additional Labor)				
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX			
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX		See Additional Labor - Other	
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC		See Additional Dispatch	
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM			
109.20.2.5	Network Premises Work Charge				
109.20.2.5.1	Basic				
109.20.2.5.1.1	First Increment	HRH11		See Additional Labor - Other	
109.20.2.5.1.2	Each Additional Increment	HRHA1			
109.20.2.5.2	Overtime				
109.20.2.5.2.1	First Increment	HRH12		See Additional Labor - Other	
109.20.2.5.2.2	Each Additional Increment	HRHA2			
109.20.2.5.3	Premium				
109.20.2.5.3.1	First Increment	HRH13		See Additional Labor - Other	
109.20.2.5.3.2	Each Additional Increment	HRHA3			
109.20.3	Design and Non-Design				
109.20.3.1	Trip Charge - Premises Visit Charge	NRTCY		See Additional Dispatch	
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
109.20.3.2.1.1	First Increment	HRD11		See Additional Labor - Other	
109.20.3.2.1.2	Each Additional Increment	HRDA1			
109.20.3.2.2	Overtime				
109.20.3.2.2.1	First Increment	HRD12		See Additional Labor - Other	
109.20.3.2.2.2	Each Additional Increment	HRDA2			
109.20.3.2.3	Premium				
109.20.3.2.3.1	First Increment	HRD13		See Additional Labor - Other	
109.20.3.2.3.2	Each Additional Increment	HRDA3			
109.20.3.3	Date Change			\$10.22	
109.20.3.4	Design Change			\$72.79	
109.20.3.5	Expedite Charge			ICB	7
109.20.3.6	Cancellation Charge			ICB	7
109.23	Qwest Platform Plus™ (QPP™)				
109.23.1	Conversion Nonrecurring Charges				
109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.1.1.1	First Line (Mechanized)	URCCU		\$0.28	
109.23.1.1.2	Each Additional Line (Mechanized)	URCCY		\$0.28	
109.23.1.1.3	Disconnect			\$0.28	
109.23.1.1.4	First Line (Manual)	URCCV		\$16.00	
109.23.1.1.5	Each Additional Line (Manual)	URCCZ		\$2.67	
109.23.1.2	QPP™ Analog PBX DID Trunks				
109.23.1.2.1	First Trunk	URCCD		\$20.34	
109.23.1.2.2	Each Additional			\$3.08	
109.23.1.3	QPP™ ISDN BRI	URCCU			
109.23.1.3.1	First			\$0.28	
109.23.1.3.2	Each Additional			\$0.28	
109.23.1.3.3	Disconnect			\$0.28	
109.23.2	Installation Nonrecurring Charges				
109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.2.1.1	First Line (Mechanized)	NHCRA		\$33.89	
109.23.2.1.2	Each Additional Line (Mechanized)	NHCRC		\$9.72	
109.23.2.1.3	First Line (Manual)	NHCRB		\$50.32	
109.23.2.1.4	Each Additional Line (Manual)	NHCRD		\$11.30	
109.23.2.2	QPP™ Analog DID PBX Trunks			\$177.02	
109.23.2.3	QPP™ ISDN-BRI			\$241.28	
109.23.3	Qwest AIN Features		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.23.4	Qwest DSL		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8

Qwest Platform Plus™ (QPP™) Rate Sheet - Arizona

		USOC	Recurring	Non-Recurring	Notes
109.23.5	Qwest Voice Messaging Services		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount		8
112 Operational Support Systems					
112.1	Develoments and Enhancements, per Local Service Request			Under Development	7
112.2	Ongoing Maintenance, per Local Service Request			Under Development	7
112.3	Daily Usage Records File, per Record		No Charge at this time		7

Notes

- 1 Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- 2 QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- 3 USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves the right to correct the Rate Sheet.
- 4 The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- 5 QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- 6 All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- 7 Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge. The charge MCI and Qwest have agreed upon will be binding to all CLECs.
- 8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.

Qwest Platform Plus™ (QPP™) Rate Sheet - Colorado

		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.0011100		
109.8.1.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.35		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$1.15		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$9.92		
109.11.1.1.1.4	PBX DID Port		\$54.19		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$3.85		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$0.36)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$12.62		
109.11.1.1.2.4	PBX DID Port		\$56.89		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$5.50		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$1.51)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$14.27		
109.11.1.1.3.4	PBX DID Port		\$58.54		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$5.98		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$1.68)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$14.75		
109.11.1.1.4.4	PBX DID Port		\$59.02		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$7.41		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$3.02)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$16.18		
109.11.1.1.5.4	PBX DID Port		\$60.45		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$8.11		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$3.36)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$16.88		
109.11.1.1.6.4	PBX DID Port		\$61.15		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.00161		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$1.35000		
109.11.1.3	Switch Features				2, 3
109.11.1.3.1	6 Way Calling For Non-Centron Line Ports	GVT		\$42.16	
109.11.1.3.2	Account Codes, Per System	AZ8PS		\$80.70	
109.11.1.3.3	ARS- Common Equipment, Per Group	F5GPG		\$2,059.23	
109.11.1.3.4	ARS- Expensive Route Warning Tone- Per System	AQWPS		\$71.61	
109.11.1.3.5	ARS- Facility Restriction Level, Per System	FRKPS		\$66.61	
109.11.1.3.6	Attendant Access Line, Per Station	DZR		\$1.15	
109.11.1.3.7	Audible Message Waiting	MGN, MWW		\$1.00	
109.11.1.3.8	Authorization Codes, Per System	AFYPS		\$236.65	
109.11.1.3.9	Centrex Common Equipment	HYE, HYS		\$1,210.94	
109.11.1.3.10	CLASS - Call Trace, Per Occurrence	NO USOC		\$2.00	
109.11.1.3.11	CMS- Packet Control Capability, Per System	PTGFS		\$482.77	
109.11.1.3.12	CMS- System Establishment, Initial Installation	MB5XX		\$965.53	
109.11.1.3.13	CMS- System Establishment, Subsequent Installation	CPVVO		\$482.77	
109.11.1.3.14	Conference Calling- Meet Me, Per System	MJJKP		\$42.16	
109.11.1.3.15	Conference Calling- Preset – Per System	MO9PK		\$42.16	
109.11.1.3.16	EBS- Automatic Line, Per Station Line	ETVPB		\$1.00	
109.11.1.3.17	EBS- Dir Sta Sel/Busy Lamp Fid, Per Arrangement	BUD		\$1.00	
109.11.1.3.18	EBS- Message Center, Per Main Station Line, Per Line	MFR		\$1.00	
109.11.1.3.19	EBS- Message Waiting Visual, Per Station Line	MLN		\$1.00	
109.11.1.3.20	EBS- Privacy Release, Per Station Line	K7KPK		\$1.38	
109.11.1.3.21	EBS Query Time, Per Station Line	QT1PK		\$1.00	
109.11.1.3.22	EBS- Station Camp On, Per Main Line, Per Line	CPK		\$1.00	
109.11.1.3.23	Hot Line, Per Line Equipped, Per Line	HLN, HLA		\$1.00	
109.11.1.3.24	Loudspeaker Paging Trunkside, Per Group	PTQFG		\$175.38	
109.11.1.3.25	Message Waiting Visual, Per Line	MV5		\$1.00	
109.11.1.3.26	Multiple Position Hunt Announcement, Per Group	MH5		\$72.37	
109.11.1.3.27	Multiple Position Hunt Queuing, Per Group	MHW		\$37.77	
109.11.1.3.28	Multiple Position Hunt, Per Line	MOHPS		\$0.66	
109.11.1.3.29	Music On Hold, Per System (DMS Only)	MHPS		\$67.62	
109.11.1.3.30	SMDR-P- Archived Data	SR7CX		\$176.19	

Qwest Platform Plus™ (QPP™) Rate Sheet - Colorado

		USOC	Recurring	Non-Recurring	Notes
109.11.1.3.31	SMDR-P- Service Establishment Charge, Initial Installation	SESP, SEPSR		\$337.17	
109.11.1.3.32	Time of Day Control for ARS, Per System	ATBPS		\$124.66	
109.11.1.3.33	Time of Day NCOS Updated, Per Main Station	A4T		\$0.55	
109.11.1.3.34	Time of Day Routing, Per Line	ATBPS		\$1.51	
109.11.1.3.35	Trunk Verification from Designated Station, Per Line Equipped	BVS		\$1.15	
109.11.1.3.36	UCD- Call Waiting Indication, Per Unique Timing State, Per Timing State	WUT		\$1.00	
109.11.1.3.37	UCD- In Hunt Group, Per Line	MHM, H6U, NZT		\$0.66	
109.11.1.3.38	UCD- Make Busy Arrangements, Per Group	A9AEX, P89		\$1.00	
109.11.1.3.39	UCD- Make Busy Arrangements, Per Line	MB1		\$1.00	
109.11.1.3.40	UCD- With Music after Delay	A5M		\$0.66	
109.11.1.4	Other				
109.11.1.4.1	Custom Number		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.11.1.4.3	PBX DID Complex Translations Digits Outpulsed Change Signaling			\$10.96	
109.11.1.4.4	PBX DID Complex Translations Signaling Change			\$24.96	
109.11.1.4.5	PBX DID Block Compromise			\$18.83	
109.11.1.4.6	PBX DID Group of 20 Numbers			\$25.06	
109.11.1.4.7	PBX DID Reserve Sequential # Block			\$18.73	
109.11.1.4.8	PBX DID Reserve Non Sequential TN			\$17.48	
109.11.1.4.9	PBX DID NonSequential TN			\$26.30	
109.11.2	Subsequent Order Charge	NHCUU		\$13.49	4
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.20	Miscellaneous Charges				5, 6
109.20.1	Non-Design				
109.20.1.1	Trouble Isolation Charge (TIC)	LTEXS		See Maintenance of Service, Basic, First Interval	
109.20.2	Design				
109.20.2.1	Maintenance of Service				
109.20.2.1.1	Basic				
109.20.2.1.1.1	First Increment	MVWXX		See Maintenance of Service	
109.20.2.1.1.2	Each Additional Increment	MVW1X			
109.20.2.1.2	Overtime				
109.20.2.1.2.1	First Increment	MVWOX		See Maintenance of Service	
109.20.2.1.2.2	Each Additional Increment	MVW2X			
109.20.2.1.3	Premium				
109.20.2.1.3.1	First Increment	MVWPX		See Maintenance of Service	
109.20.2.1.3.2	Each Additional Increment	MVW3X			
109.20.2.2	Optional Testing (Additional Labor)				
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX		See Additional Labor - Other	
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX			
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC		See Additional Dispatch	
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM			
109.20.3	Design and Non-Design				
109.20.3.1	Trip Charge - Premises Visit Charge	NRTCY		See Additional Dispatch	
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
109.20.3.2.1.1	First Increment	HRD11		See Additional Labor - Other	
109.20.3.2.1.2	Each Additional Increment	HRDA1			
109.20.3.2.2	Overtime				
109.20.3.2.2.1	First Increment	HRD12		See Additional Labor - Other	
109.20.3.2.2.2	Each Additional Increment	HRDA2			
109.20.3.2.3	Premium				
109.20.3.2.3.1	First Increment	HRD13		See Additional Labor - Other	
109.20.3.2.3.2	Each Additional Increment	HRDA3			
109.20.3.3	Network Premises Work Charge				
109.20.3.3.1	Basic				
109.20.3.3.1.1	First Increment	HRH11		See Additional Labor - Other	
109.20.3.3.1.2	Each Additional Increment	HRHA1			

Qwest Platform Plus™ (QPP™) Rate Sheet - Colorado

	USOC	Recurring	Non-Recurring	Notes
109.20.3.3.2 Overtime				
109.20.3.3.2.1 First Increment	HRH12		See Additional	
109.20.3.3.2.2 Each Additional Increment	HRHA2		Labor - Other	
109.20.3.3.3 Premium				
109.20.3.3.3.1 First Increment	HRH13		See Additional	
109.20.3.3.3.2 Each Additional Increment	HRHA3		Labor - Other	
109.20.3.4 Date Change			\$10.38	
109.20.3.5 Design Change			\$73.93	
109.20.3.6 Expedite Charge			ICB	7
109.20.3.7 Cancellation Charge			ICB	7
109.23 Qwest Platform Plus™ (QPP™)				
109.23.1 Conversion Nonrecurring Charges				
109.23.1.1 QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.1.1.1 First Line (Mechanized)	URCCU		\$0.68	
109.23.1.1.2 Each Additional Line (Mechanized)	URCCY		\$0.14	
109.23.1.1.3 First Line (Manual)	URCCV		\$12.19	
109.23.1.1.4 Each Additional Line (Manual)	URCCZ		\$2.03	
109.23.1.2 QPP™ PBX DID Trunks				
109.23.1.2.1 First Trunk	URCCD		\$15.49	
109.23.1.2.2 Each Additional			\$2.34	
109.23.1.3 QPP™ ISDN BRI	URCCU			
109.23.1.3.1 First			\$11.34	
109.23.1.3.2 Each Additional			\$2.34	
109.23.2 Installation Nonrecurring Charges				
109.23.2.1 QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.2.1.1 First Line (Mechanized)	NHCRA		\$41.57	
109.23.2.1.2 Each Additional Line (Mechanized)	NHCRC		\$11.93	
109.23.2.1.3 First Line (Manual)	NHCRB		\$61.71	
109.23.2.1.4 Each Additional Line (Manual)	NHCRD		\$13.86	
109.23.2.2 QPP™ Analog DID PBX Trunks			\$132.41	
109.23.2.3 QPP™ ISDN-BRI			\$180.49	
109.23.3 Qwest AIN Features			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.23.4 Qwest DSL			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.23.5 Qwest Voice Messaging Services			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount	8
112 Operational Support Systems				
112.1 Developments and Enhancements, per Local Service Request			Under Development	7
112.2 Ongoing Maintenance, per Local Service Request			Under Development	7
112.3 Daily Usage Records File, per Record		\$0.000886		7

Notes

- Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves the right to correct the Rate Sheet.
- The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge.

Qwest Platform Plus™ (QPP™) Rate Sheet - Colorado

	USOC	Recurring	Non-Recurring	Notes
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The charge MCI and Qwest have agreed upon will be binding to all CLECs.

- 8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.

Qwest Platform Plus™ (QPP™) Rate Sheet - Minnesota

		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential and Business (Per MOU)		\$0.0006513		
109.8.1.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.21		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$3.12		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$9.36		
109.11.1.1.1.4	PBX DID Port		\$2.95		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$5.82		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$0.36)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$12.06		
109.11.1.1.2.4	PBX DID Port		\$5.65		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$7.47		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$1.51)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$13.71		
109.11.1.1.3.4	PBX DID Port		\$7.30		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$7.95		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$1.68)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$14.19		
109.11.1.1.4.4	PBX DID Port		\$7.78		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$9.38		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$3.02)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$15.62		
109.11.1.1.5.4	PBX DID Port		\$9.21		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$10.08		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$3.36)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$16.32		
109.11.1.1.6.4	PBX DID Port		\$9.91		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential and Business (Per MOU)		\$0.00		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$0.00		
109.11.1.3	Switch Features		\$0.00	\$0.00	2, 3
109.11.1.4	Other				
109.11.1.4.1	Custom Number				8
109.11.1.4.3	PBX DID Complex Translation Digits Outpulsed			\$11.44	
109.11.1.4.4	PBX DID Complex Translations Signaling Change			\$26.69	
109.11.1.4.5	PBX DID Block Compromise			\$4.94	
109.11.1.4.6	PBX DID Group of 20 Numbers			\$1.50	
109.11.1.4.7	PBX DID Reserve Sequential # Block			\$4.90	
109.11.1.4.8	PBX DID Reserve Nonsequential Telephone Number			\$3.53	
109.11.1.4.9	PBX DID Nonsequential Telephone Number			\$3.53	
109.11.2	Subsequent Order Charge/Feature Change Charge	NHCUU, NHCVQ		\$0.44	4
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123				8
109.20	Miscellaneous Charges				5, 6
109.20.1	Non-Design				
109.20.1.1	Trouble Isolation Charge (TIC)	LTESX		See Maintenance of Service, Basic, First Interval	
109.20.2	Design				

Qwest Platform Plus™ (QPP™) Rate Sheet - Minnesota

				USOC	Recurring	Non-Recurring	Notes
109.20.2.1	Maintenance of Service						
	109.20.2.1.1	Basic					
		109.20.2.1.1.1	First Increment	MVWXX		See Maintenance of Service	
		109.20.2.1.1.2	Each Additional Increment	MVW1X			
	109.20.2.1.2	Overtime					
		109.20.2.1.2.1	First Increment	MVWOX		See Maintenance of Service	
		109.20.2.1.2.2	Each Additional Increment	MVW2X			
	109.20.2.1.3	Premium					
		109.20.2.1.3.1	First Increment	MVWPX		See Maintenance of Service	
		109.20.2.1.3.2	Each Additional Increment	MVW3X			
109.20.2.2	Optional Testing (Additional Labor)						
	109.20.2.2.1	Basic, First and Each Additional Increment		OTNBX		See Additional Labor - Other	
	109.20.2.2.2	Overtime, First and Each Additional Increment		OTNOX			
	109.20.2.2.3	Premium, First and Each Additional Increment		OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)			VT6DC		See Additional Dispatch	
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found			VT6DM			
109.20.3	Design and Non-Design						
	109.20.3.1	Trip Charge - Premises Visit Charge		No USOC		See Additional Dispatch	
	109.20.3.2	Premises Work Charge					
		109.20.3.2.1	Basic				
			109.20.3.2.1.1 First Increment	HRD11		See Additional Labor - Other	
			109.20.3.2.1.2 Each Additional Increment	HRDA1			
		109.20.3.2.2	Overtime				
			109.20.3.2.2.1 First Increment	HRD12		See Additional Labor - Other	
			109.20.3.2.2.2 Each Additional Increment	HRDA2			
		109.20.3.2.3	Premium				
			109.20.3.2.3.1 First Increment	HRD13		See Additional Labor - Other	
			109.20.3.2.3.2 Each Additional Increment	HRDA3			
	109.20.3.3	Date Change				Under Development	7
	109.20.3.4	Design Change				Under Development	7
	109.20.3.5	Expedite Charge				ICB	7
	109.20.3.6	Cancellation Charge				ICB	7
109.23	Qwest Platform Plus™ (QPP™)						
	109.23.1	Conversion Nonrecurring Charges					
		109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
			109.23.1.1.1 First Line (Mechanized)	URCCU		\$0.67	
			109.23.1.1.2 Each Additional Line (Mechanized)	URCCY		\$0.67	
			109.23.1.1.3 Disconnect (Manual and Mechanized)			\$0.44	
			109.23.1.1.4 First Line (Manual)	URCCV		\$0.67	
			109.23.1.1.5 Each Additional Line (Manual)	URCCZ		\$0.67	
		109.23.1.2	QPP™ PBX DID Trunks			\$1.07	
		109.23.1.3	QPP™ ISDN BRI	URCCU		\$1.13	
	109.23.2	Installation Nonrecurring Charges					
		109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
			109.23.2.1.1 First Line (Mechanized)	NHCRA		\$0.67	
			109.23.2.1.2 Each Additional Line (Mechanized)	NHCRC		\$0.67	
			109.23.2.1.3 Disconnect (Manual and Mechanized)			\$0.44	
			109.23.2.1.4 First Line (Manual)	NHCRB		\$0.44	
			109.23.2.1.5 Each Additional Line (Manual)	NHCRD		\$0.44	
		109.23.2.2	QPP™ Analog DID PBX Trunks			\$181.92	
		109.23.2.3	QPP™ ISDN-BRI			\$248.92	
	109.23.3	Qwest AIN Features			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
	109.23.4	Qwest DSL			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
	109.23.5	Qwest Voice Messaging Services			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount		8
112	Operational Support Systems						

Qwest Platform Plus™ (QPP™) Rate Sheet - Minnesota

		USOC	Recurring	Non-Recurring	Notes
112.1	Develoments and Enhancements, per Local Service Request			Under development	7
112.2	Ongoing Maintenance, per Local Service Request			Under development	7
112.3	Daily Usage Records File, per Record		\$0.00		7

Notes

- 1 Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- 2 QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- 3 USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves the right to correct the Rate Sheet.
- 4 The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- 5 QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- 6 All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- 7 Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge. The charge MCI and Qwest have agreed upon will be binding to all CLECs.
- 8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.

Qwest Platform Plus™ (QPP™) Rate Page - Oregon

		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.0010400		
109.8.1.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.33		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$1.14		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$6.09		
109.11.1.1.1.4	PBX DID Port		\$2.66		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$3.84		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$1.53)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$8.79		
109.11.1.1.2.4	PBX DID Port		\$5.36		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$4.24		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$1.68)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$9.19		
109.11.1.1.3.4	PBX DID Port		\$5.76		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$4.58		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$1.87)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$9.53		
109.11.1.1.4.4	PBX DID Port		\$6.10		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$4.90		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$2.14)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$9.85		
109.11.1.1.5.4	PBX DID Port		\$6.42		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$5.32		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$2.38)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$10.27		
109.11.1.1.6.4	PBX DID Port		\$6.84		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.00133		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$1.12		
109.11.1.3	Switch Features				2, 3
109.11.1.3.1	Account Codes, per System	AZ8PS		\$99.05	
109.11.1.3.2	Attendant Access Line, per Station Line	DZR		\$1.21	
109.11.1.3.3	Audible Message Waiting	MGN, MWW		\$1.05	
109.11.1.3.4	Authorization Codes, per System	AFYPS		\$254.47	
109.11.1.3.5	Automatic Line	ETVPB		\$0.36	
109.11.1.3.6	Automatic Route Selection - Common Equipment, per System	F5GPG		\$2,080.70	
109.11.1.3.7	Call Drop	NA-FID		\$0.44	
109.11.1.3.8	Call Exclusion - Automatic	NXB (ISDN)		\$1.05	
109.11.1.3.9	Call Forwarding: Busy Line	69J, 69JGH, EVB, EVBHG		\$0.17	
109.11.1.3.10	Call Forwarding: Busy Line - Don't Answer (Expanded)	FVJ, FVJHG		\$0.17	
109.11.1.3.11	Call Forwarding: Busy Line - Don't Answer (Overflow)	EV2, EV2HG		\$0.17	
109.11.1.3.12	Call Forwarding: Busy Line - Don't Answer, Service Establishment	SEPPA		\$21.07	
109.11.1.3.13	Call Forwarding: Busy Line - Incoming Only	69B1X		\$36.87	
109.11.1.3.14	Call Forwarding: Busy Line (Expanded)	FBJ, FBJHG		\$0.17	
109.11.1.3.15	Call Forwarding: Busy Line (External)	EVB, EVBHG		\$0.17	
109.11.1.3.16	Call Forwarding: Busy Line (Overflow)	EVO, EVOHG		\$0.17	
109.11.1.3.17	Call Forwarding: Busy Line (Programmable), Each Line	ERB		\$0.17	
109.11.1.3.18	Call Forwarding: Don't Answer	EVD, EVDHG, 69H, 69HHG		\$0.17	
109.11.1.3.19	Call Forwarding: Don't Answer (Expanded)	FDJ, FDJHG		\$0.17	

Qwest Platform Plus™ (QPP™) Rate Page - Oregon

		USOC	Recurring	Non-Recurring	Notes
109.11.1.3.20	Call Forwarding: Don't Answer (Programmable)	ERD		\$0.17	
109.11.1.3.21	Call Forwarding: Don't Answer - Incoming Only	69A		\$36.87	
109.11.1.3.22	Call Forwarding: Variable	ESM		\$0.17	
109.11.1.3.23	Call Hold (Centrex)	6APPK		\$0.17	
109.11.1.3.24	Call Transfer	EO3		\$0.17	
109.11.1.3.25	Call Waiting / Cancel Call Waiting	ESX, 6SY		\$0.17	
109.11.1.3.26	Call Waiting Indication - per Timing State	WUT		\$1.05	
109.11.1.3.27	Centrex Common Equipment	HYE, HYS		\$1,430.62	
109.11.1.3.28	CLASS - Call Trace, per Occurrence	NO USOC		\$0.17	
109.11.1.3.29	CLASS - Calling Name & Number	NNK		\$0.17	
109.11.1.3.30	CLASS - Calling Number Delivery	NSD		\$0.17	
109.11.1.3.31	CLASS - Calling Number Delivery - Blocking	NDD(ISDN), NKM, NKS		\$0.17	
109.11.1.3.32	CLASS - Continuous Redial	NSS		\$0.17	
109.11.1.3.33	CLASS - Last Call Return	NSQ		\$0.17	
109.11.1.3.34	CLASS - Priority Calling	NSK		\$0.17	
109.11.1.3.35	CLASS - Selective Call Forwarding	NCE		\$0.17	
109.11.1.3.36	CLASS - Selective Call Rejection	NSY		\$0.17	
109.11.1.3.37	CMS - Packet Control Capability, per System	PTGPS		\$502.24	
109.11.1.3.38	CMS - System Establishment - Initial Installation	MB5XX		\$1,004.48	
109.11.1.3.39	CMS - System Establishment - Subsequent Installation	CPVWO		\$502.24	
109.11.1.3.40	Conference Calling - Meet Me	MJJPK		\$46.50	
109.11.1.3.41	Conference Calling - Preset	MO9PK		\$46.50	
109.11.1.3.42	Conference Calling - Station Dial (6-way)	GVT		\$49.57	
109.11.1.3.43	Direct Station Selection / Busy Lamp Field, per Arrangement	BUD		\$0.17	
109.11.1.3.44	Directed Call Pick up	6MD		\$0.17	
109.11.1.3.45	Directed Call Pick up with Barge-In	69D		\$0.17	
109.11.1.3.46	Distinctive Ring / Distinctive Call Waiting	RNN		\$50.12	
109.11.1.3.47	Distinctive Ringing (Distinctive Alert)	WDD		\$0.17	
109.11.1.3.48	Expensive Route Warning Tone, per System	AQWPS		\$80.84	
109.11.1.3.49	Facility Restriction Level, per System	FRKPS		\$43.02	
109.11.1.3.50	Group Intercom	GCN		\$0.57	
109.11.1.3.51	Hot Line (Centrex), per Line	HLN		\$0.17	
109.11.1.3.52	Hunting (Centrex)	NO USOC		\$0.17	
109.11.1.3.53	Hunting: Multiposition Hunt Queuing	MH5		\$37.48	
109.11.1.3.54	Hunting: Multiposition with Announcement in Queue	MHW		\$37.48	
109.11.1.3.55	Hunting: Multiposition with Music in Queue	MOHPS		\$37.02	
109.11.1.3.56	ISDN Short Hunt	NHGPG		\$1.93	
109.11.1.3.57	Loudspeaker Paging, per Trunk Group	PTQPG		\$194.83	
109.11.1.3.58	Make Busy Arrangements, per Group	A9AEX, P89		\$0.61	
109.11.1.3.59	Make Busy Arrangements, per Line	MB1		\$0.61	
109.11.1.3.60	Message Center, per Main Station Line	MFR		\$0.44	
109.11.1.3.61	Message Waiting Visual	MV5		\$0.44	
109.11.1.3.62	Music On Hold, per System	MHHPS		\$31.59	
109.11.1.3.63	Privacy Release	K7KPK		\$0.62	
109.11.1.3.64	Query Time	QT1PK		\$0.44	
109.11.1.3.65	SMDR-P Archived Data	SR7CX		\$165.29	
109.11.1.3.66	SMDR-P Service Establishment Charge, Initial Installation	SEPSP, SEPSR		\$361.84	
109.11.1.3.67	Speed Calling - Eight Code Capacity	ESL, GVJ, EZJ, GVZ		\$0.17	
109.11.1.3.68	Speed Calling - Thirty Code Capacity	ESF, GV2, EVH, GVV		\$0.17	
109.11.1.3.69	Station Camp - On Service, per Main Station	CPK		\$0.44	
109.11.1.3.70	Three Way Calling	ESC		\$0.17	
109.11.1.3.71	Time of Day Control for ARS, per System	ATBPS		\$135.83	
109.11.1.3.72	Time of Day NCOS Update	A4T		\$0.71	
109.11.1.3.73	Time of Day Routing, per Line	ATBPS		\$0.67	
109.11.1.3.74	Trunk Verification from Designated Station	BVS		\$0.51	
109.11.1.3.75	UCD in Hunt Group, per Line	MHM, H6U, NZT		\$0.61	
109.11.1.3.76	Warm Line	WLS		\$0.17	
109.11.1.4	Other				
109.11.1.4.1	Custom Number		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.11.1.4.3	PBX DID Complex Translation Digital Outpulsed Changed Signaling			\$15.89	
109.11.1.4.4	PBX DID Complex Translation Signaling Change			\$37.08	
109.11.1.4.5	PBX DID Block Compromise			\$26.66	
109.11.1.4.6	PBX DID Reserve Sequential # Block			\$26.50	
109.11.1.4.7	PBX DID Reserve Nonsequential Telephone Numbers			\$24.71	
109.11.1.4.8	PBX DID Nonsequential Telephone Numbers			\$34.27	
109.11.2	Subsequent Order Charge	NHCUU		\$14.24	4

Qwest Platform Plus™ (QPP™) Rate Page - Oregon

		USOC	Recurring	Non-Recurring	Notes
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.20	Miscellaneous Charges				5, 6
109.20.1	Non-Design				
109.20.1.1	Trouble Isolation Charge (TIC)	MCE		See Maintenance of Service, Basic, First Interval	
109.20.2	Design				
109.20.2.1	Maintenance of Service				
109.20.2.1.1	Basic				
109.20.2.1.1.1	First Increment	MVWXX			
109.20.2.1.1.2	Each Additional Increment	MVW1X		See Maintenance of Service	
109.20.2.1.2	Overtime				
109.20.2.1.2.1	First Increment	MVWOX			
109.20.2.1.2.2	Each Additional Increment	MVW2X		See Maintenance of Service	
109.20.2.1.3	Premium				
109.20.2.1.3.1	First Increment	MVWPX			
109.20.2.1.3.2	Each Additional Increment	MVW3X		See Maintenance of Service	
109.20.2.2	Optional Testing (Additional Labor)				
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX			
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX		See Additional Labor - Other	
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC			
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM		See Additional Dispatch	
109.20.3	Design and Non-Design				
109.20.3.1	Trip Charge - Premises Visit Charge	SCO		See Additional Dispatch	
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
109.20.3.2.1.1	First Increment	HRD11			
109.20.3.2.1.2	Each Additional Increment	HRDA1		See Additional Labor - Other	
109.20.3.2.2	Overtime				
109.20.3.2.2.1	First Increment	HRD12			
109.20.3.2.2.2	Each Additional Increment	HRDA2		See Additional Labor - Other	
109.20.3.2.3	Premium				
109.20.3.2.3.1	First Increment	HRD13			
109.20.3.2.3.2	Each Additional Increment	HRDA3		See Additional Labor - Other	
109.20.3.3	Date Change				\$48.66
109.20.3.4	Design Change				\$103.10
109.20.3.5	Expedite Charge			ICB	7
109.20.3.6	Cancellation Charge			ICB	7
109.23	Qwest Platform Plus™ (QPP™)				
109.23.1	Conversion Nonrecurring Charges				
109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.1.1.1	First Line (Mechanized)	URCCU			\$0.71
109.23.1.1.2	Each Additional Line (Mechanized)	URCCY			\$0.14
109.23.1.1.3	First Line (Manual)	URCCV			\$17.09
109.23.1.1.4	Each Additional Line (Manual)	URCCZ			\$2.85
109.23.1.2	QPP™ PBX DID Trunks				
109.23.1.2.1	First Trunk	URCCD			\$30.11
109.23.1.2.2	Each Additional				\$2.85
109.23.1.3	QPP™ ISDN BRI	URCCU			
109.23.1.3.1	First				\$32.01
109.23.1.3.2	Each Additional				\$2.85
109.23.2	Installation Nonrecurring Charges				
109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.2.1.1	First Line (Mechanized)	NHCRA			\$59.57
109.23.2.1.2	Each Additional Line (Mechanized)	NHCRC			\$16.32
109.23.2.1.3	First Line (Manual)	NHCRB			\$85.49
109.23.2.1.4	Each Additional Line (Manual)	NHCRD			\$19.02
109.23.2.2	QPP™ Analog DID PBX Trunks				\$15.82
109.23.2.3	QPP™ ISDN-BRI				\$310.62

Qwest Platform Plus™ (QPP™) Rate Page - Oregon

		USOC	Recurring	Non-Recurring	Notes
109.23.3	Qwest AIN Features		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.23.4	Qwest DSL		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.23.5	Qwest Voice Messaging Services		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount		8
112 Operational Support Systems					
112.1	Developments and Enhancements, per Local Service Request			No Charge at this time	7
112.2	Ongoing Maintenance, per Local Service Request			No Charge at this time	7
112.3	Daily Usage Records File, per Record		No Charge at this time		7

Notes

- 1 Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- 2 QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- 3 USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves the right to correct the Rate Sheet.
- 4 The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- 5 QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- 6 All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- 7 Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge. The charge MCI and Qwest have agreed upon will be binding to all CLECs.
- 8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.

Qwest Platform Plus™ (QPP™) Rate Page - Utah

		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.0010390		
109.8.1.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.33		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$3.56		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$10.49		
109.11.1.1.1.4	PBX DID Port		\$2.04		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$6.26		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$1.14)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$13.19		
109.11.1.1.2.4	PBX DID Port		\$4.74		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$6.97		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$1.52)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$13.90		
109.11.1.1.3.4	PBX DID Port		\$5.45		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$7.35		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$1.69)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$14.28		
109.11.1.1.4.4	PBX DID Port		\$5.83		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$7.94		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$2.22)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$14.87		
109.11.1.1.5.4	PBX DID Port		\$6.42		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$8.43		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$2.47)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$15.36		
109.11.1.1.6.4	PBX DID Port		\$6.91		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential, Business, and PAL (Per MOU)		\$0.00		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$0.00		
109.11.1.3	Switch Features				2, 3
109.11.1.3.1	Account Codes - per System	AZ8PS		\$43.89	
109.11.1.3.2	Attendant Access Line - per Station Line	DZR		\$0.63	
109.11.1.3.3	Audible Message Waiting	MGN, MWW		\$0.56	
109.11.1.3.4	Authorization Codes - per System	AFYPS		\$131.27	
109.11.1.3.5	Automatic Line	ETVPB		\$0.19	
109.11.1.3.6	Automatic Route Selection - Common Equipment., per System	F5GPG		\$1,151.80	
109.11.1.3.7	Call Drop	NA-FID		\$0.19	
109.11.1.3.8	Call Exclusion - Automatic	NXB (ISDN)		\$0.56	
109.11.1.3.9	Call Exclusion - Manual	NA-FID (ISDN)		\$0.37	
109.11.1.3.10	Call Forwarding Busy Line - Incoming Only	69B1X		\$20.80	
109.11.1.3.11	Call Forwarding Don't Answer / Call Forwarding Busy - Customer Programmable, per Line	FSW		\$0.56	
109.11.1.3.12	Call Forwarding Don't Answer Incoming Only	69A		\$20.80	
109.11.1.3.13	Call Forwarding: Busy Line / Don't Answer (Expanded)	FVJ, FVJHG		\$20.80	
109.11.1.3.14	Call Forwarding: Busy Line / Don't Answer Programmable Service Establishment	SEPPA		\$8.59	
109.11.1.3.15	Call Forwarding: Don't Answer	69H, EVD, EVDHG		\$20.80	
109.11.1.3.16	Call Waiting Indication, per Timing State	WUT		\$0.56	
109.11.1.3.17	Centrex Common Equipment	HYE, HYS		\$661.73	
109.11.1.3.18	CLASS - Call Trace, per Occurrence	NO USOC		\$1.78	
109.11.1.3.19	CLASS - Continuous Redial	NSS		\$0.69	
109.11.1.3.20	CLASS - Last Call Return	NSQ		\$0.70	
109.11.1.3.21	CLASS - Priority Calling	NSK		\$0.66	
109.11.1.3.22	CLASS - Selective Call Forwarding	NCE		\$0.69	
109.11.1.3.23	CLASS - Selective Call Rejection	NSY		\$0.66	
109.11.1.3.24	CMS - Packet Control Capability, per System	PTGPS		\$266.51	
109.11.1.3.25	CMS - System Establishment - Initial Installation	MB5XX		\$533.01	
109.11.1.3.26	CMS - System Establishment - Subsequent Installation	CPVWO		\$266.51	

Qwest Platform Plus™ (QPP™) Rate Page - Utah

		USOC	Recurring	Non-Recurring	Notes
109.11.1.3.27	Conference Calling - Meet Me	MJJPK		\$23.30	
109.11.1.3.28	Conference Calling - Preset	MO9PK		\$23.30	
109.11.1.3.29	Direct Station Selected / Busy Lamp Field per Arrangement	BUD		\$0.19	
109.11.1.3.30	Directed Call Pickup with Barge-in	6MD		\$11.06	
109.11.1.3.31	Directed Call Pickup without Barge-in	69D		\$11.06	
109.11.1.3.32	Distinctive Ring / Distinctive Call Waiting	RNN		\$22.12	
109.11.1.3.33	Expensive Route Warning Tone, per System	AQWPS		\$39.45	
109.11.1.3.34	Facility Restriction Level, per System	FRKPS		\$24.27	
109.11.1.3.35	Group Intercom	GCN		\$0.25	
109.11.1.3.36	Hot Line, per line	HLA, HLN		\$0.56	
109.11.1.3.37	Hunting: Multiposition Hunt Queuing	MH5		\$21.17	
109.11.1.3.38	Hunting: Multiposition with Announcement in Queue	MHW		\$21.17	
109.11.1.3.39	Hunting: Multiposition with Music in Queue	MOHPS		\$22.35	
109.11.1.3.40	ISDN Short Hunt	NHGPG		\$0.93	
109.11.1.3.41	Loudspeaker Paging,- per Trunk Group	PTQPG		\$96.85	
109.11.1.3.42	Make Busy Arrangements,- per Group	A9AEX, P89		\$0.37	
109.11.1.3.43	Make Busy Arrangements, per Line	MB1		\$0.37	
109.11.1.3.44	Message Center per Main Station Line	MFR		\$0.19	
109.11.1.3.45	Message Waiting Visual	MV5		\$0.19	
109.11.1.3.46	Music On Hold, per System	MHHPS		\$12.69	
109.11.1.3.47	Privacy Release	K7KPK		\$0.26	
109.11.1.3.48	Query Time	QT1PK		\$0.19	
109.11.1.3.49	SMDR-P - Archived Data	SR7CX		\$97.26	
109.11.1.3.50	SMDR-P - Service Establishment Charge, Initial Installation	SESP, SEPSR		\$164.15	
109.11.1.3.51	Station Camp-On Service, per Main Station	CPK		\$0.19	
109.11.1.3.52	Time of Day Control for ARS,- per System	ATBPS		\$69.03	
109.11.1.3.53	Time of Day NCOs Update	A4T		\$0.30	
109.11.1.3.54	Time of Day Routing,- per Line	ATBPS		\$0.28	
109.11.1.3.55	Trunk Verification from Designated Station	BVS		\$0.22	
109.11.1.3.56	UCD in Hunt Group, per Line	MHM, H6U, NZT		\$0.37	
109.11.1.4	Other				
109.11.1.4.1	Custom Number		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.11.1.4.3	PBX DID Complex Translations Digits Outpulsed Change Signaling			\$14.71	
109.11.1.4.4	PBX DID Complex Translations Signaling Change			\$34.56	
109.11.1.4.5	PBX DID Block Compromise			\$26.08	
109.11.1.4.6	PBX DID Group of 20 Numbers			\$34.70	
109.11.1.4.7	PBX DID Reserve Sequential # Block			\$25.93	
109.11.1.4.8	PBX DID Reserve Nonsequential Telephone Number			\$24.20	
109.11.1.4.9	PBX DID Nonsequential Telephone Number			\$36.41	
109.11.2	Subsequent Order Charge	NHCUU		\$3.80	4
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.20	Miscellaneous Charges				5, 6
109.20.1	Non-Design				
109.20.1.1	Trouble Isolation Charge (TIC)	LTESX		See Maintenance of Service, Basic, First Interval	
109.20.1.2	Network Premises Work Charge - Basic				
109.20.1.2.1	First Increment	HRH11		See Additional Labor - Other	
109.20.1.2.2	Each Additional Increment	HRHA1			
109.20.2	Design				
109.20.2.1	Maintenance of Service				
109.20.2.1.1	Basic				
109.20.2.1.1.1	First Increment	MVWXX		See Maintenance of Service	
109.20.2.1.1.2	Each Additional Increment	MVW1X			
109.20.2.1.2	Overtime				
109.20.2.1.2.1	First Increment	MVWOX		See Maintenance of Service	
109.20.2.1.2.2	Each Additional Increment	MVW2X			
109.20.2.1.3	Premium				
109.20.2.1.3.1	First Increment	MVWPX		See Maintenance of Service	
109.20.2.1.3.2	Each Additional Increment	MVW3X			
109.20.2.2	Optional Testing (Additional Labor)				
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX		See Additional Labor - Other	
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX			
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC		See Additional	

Qwest Platform Plus™ (QPP™) Rate Page - Utah

		USOC	Recurring	Non-Recurring	Notes
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM		Dispatch	
109.20.2.5	Network Premises Work Charge				
109.20.2.5.1	Basic				
	109.20.2.5.1.1 First Increment	HRH11		See Additional	
	109.20.2.5.1.2 Each Additional Increment	HRHA1		Labor - Other	
109.20.2.5.2	Overtime				
	109.20.2.5.2.1 First Increment	HRH12		See Additional	
	109.20.2.5.2.2 Each Additional Increment	HRHA2		Labor - Other	
109.20.2.5.3	Premium				
	109.20.2.5.3.1 First Increment	HRH13		See Additional	
	109.20.2.5.3.2 Each Additional Increment	HRHA3		Labor - Other	
109.20.3	Design and Non-Design				
109.20.3.1	Trip Charge - Premises Visit Charge	NRTCY		See Additional	
				Dispatch	
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
	109.20.3.2.1.1 First Increment	HRD11		See Additional	
	109.20.3.2.1.2 Each Additional Increment	HRDA1		Labor - Other	
109.20.3.2.2	Overtime				
	109.20.3.2.2.1 First Increment	HRD12		See Additional	
	109.20.3.2.2.2 Each Additional Increment	HRDA2		Labor - Other	
109.20.3.2.3	Premium				
	109.20.3.2.3.1 First Increment	HRD13		See Additional	
	109.20.3.2.3.2 Each Additional Increment	HRDA3		Labor - Other	
109.20.3.3	Date Change				\$2.93
109.20.3.4	Design Change				\$35.89
109.20.3.5	Expedite Charge			ICB	7
109.20.3.6	Cancellation Charge			ICB	7
109.23	Qwest Platform Plus™ (QPP™)				
109.23.1	Conversion Nonrecurring Charges				
109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
	109.23.1.1.1 First Line (Mechanized)	URCCU			\$0.26
	109.23.1.1.2 Each Additional Line (Mechanized)	URCCY			\$0.05
	109.23.1.1.3 First Line (Manual)	URCCV			\$8.93
	109.23.1.1.4 Each Additional Line (Manual)	URCCZ			\$1.49
109.23.1.2	QPP™ PBX DID Trunks				
	109.23.1.2.1 First Trunk	URCCD			\$5.89
	109.23.1.2.2 Each Additional				\$0.97
109.23.1.3	QPP™ ISDN BRI	URCCU			
	109.23.1.3.1 First				\$4.34
	109.23.1.3.2 Each Additional				\$0.97
109.23.2	Installation Nonrecurring Charges				
109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
	109.23.2.1.1 First Line (Mechanized)	NHCRA			\$28.98
	109.23.2.1.2 Each Additional Line (Mechanized)	NHCRC			\$7.58
	109.23.2.1.3 Disconnection, First Line (Mechanized)				\$1.31
	109.23.2.1.4 Disconnection, Each Additional Line (Mechanized)				\$1.14
	109.23.2.1.5 First Line (Manual)	NHCRB			\$37.65
	109.23.2.1.6 Each Additional Line (Manual)	NHCRD			\$9.02
	109.23.2.1.7 Disconnection, First Line (Manual)				\$7.59
	109.23.2.1.8 Disconnection, Each Additional Line (Manual)				\$1.14
109.23.2.2	QPP™ Analog DID PBX Trunks				\$183.35
109.23.2.3	QPP™ ISDN-BRI				\$249.92
109.23.3	Qwest AIN Features		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.23.4	Qwest DSL		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).		8
109.23.5	Qwest Voice Messaging Services		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount		8
112	Operational Support Systems				

Qwest Platform Plus™ (QPP™) Rate Page - Utah

		USOC	Recurring	Non-Recurring	Notes
112.1	Develoments and Enhancements, per Local Service Request			No Charge at this time	7
112.2	Ongoing Maintenance, per Local Service Request			No Charge at this time	7
112.3	Daily Usage Records File, per Record		\$0.000506		

Notes

- 1 Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- 2 QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- 3 USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves
- 4 The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- 5 QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- 6 All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- 7 Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge. The charge MCI and Qwest have agreed upon will be binding to all CLECs.
- 8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.

Qwest Platform Plus™ (QPP™) Rate Page - Washington

		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential and Business (Per MOU)		\$0.0007600		
109.8.1.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per line/trunk)	UGUST	\$0.24		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$1.34		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$8.84		
109.11.1.1.1.4	PBX DID Port		\$3.04		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$4.04		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$1.14)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$11.54		
109.11.1.1.2.4	PBX DID Port		\$5.74		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$5.69		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$2.46)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$13.19		
109.11.1.1.3.4	PBX DID Port		\$7.39		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$6.17		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$2.73)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$13.67		
109.11.1.1.4.4	PBX DID Port		\$7.87		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$7.60		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$4.10)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$15.10		
109.11.1.1.5.4	PBX DID Port		\$9.30		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$8.30		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$4.56)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$15.80		
109.11.1.1.6.4	PBX DID Port		\$10.00		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential and Business (Per MOU)		\$0.001178		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per Line/Trunk)	UGUFM	\$0.99		
109.11.1.3	Switch Features				2, 3
109.11.1.3.1	Account Codes, per System	AZ8PS		\$55.34	
109.11.1.3.2	Attendant Access Line, per Station Line	DZR		\$0.80	
109.11.1.3.3	Audible Message Waiting	MGN, MWW		\$0.70	
109.11.1.3.4	Authorization Codes, per System	AFYPS		\$165.60	
109.11.1.3.5	Automatic Line (per station line)	ETVBP		\$0.24	
109.11.1.3.6	Automatic Route Selection - Common Equipment, per System	F5GPG		\$1,452.08	
109.11.1.3.7	Call Drop	NA-FID		\$0.24	
109.11.1.3.8	Call Exclusion - Automatic	NXB (ISDN)		\$0.70	
109.11.1.3.9	Call Exclusion - Manual	NA-FID (IDSN)		\$0.46	
109.11.1.3.10	Call Forwarding Busy Line - Incoming Only	69B1X		\$26.23	
109.11.1.3.11	Call Forwarding Don't Answer - Incoming Only	69A		\$26.23	
109.11.1.3.12	Call Forwarding Don't Answer / Call Forwarding Busy Customer Program - per Line	FSW		\$0.70	
109.11.1.3.13	Call Forwarding: Busy Line / Don't Answer (Expanded)	FVJ, FVJHG		\$10.83	
109.11.1.3.14	Call Waiting Indication - per timing state	WUT		\$0.70	
109.11.1.3.15	Centrex Common Equipment	HYE, HYS		\$834.24	
109.11.1.3.16	CLASS - Call Trace, per Occurrence	NO USOC		\$1.29	
109.11.1.3.17	CLASS - Continuous Redial	NSS		\$0.87	
109.11.1.3.18	CLASS - Last Call Return	NSQ		\$0.88	
109.11.1.3.19	CLASS - Priority Calling	NSK		\$0.83	
109.11.1.3.20	CLASS - Selective Call Forwarding	NCE		\$0.87	
109.11.1.3.21	CLASS - Selective Call Rejection	NSY		\$0.83	
109.11.1.3.22	Direct Station Selection/Busy Lamp Field, per Arrangement	BLD		\$0.24	
109.11.1.3.23	Directed Call Pickup with Barge-in	6MD		\$13.95	
109.11.1.3.24	Directed Call Pickup without Barge-in	69D		\$13.95	
109.11.1.3.25	Distinctive Ring / Distinctive Call Waiting	RNN		\$27.88	
109.11.1.3.26	Expensive Route Warning Tone, per System	AQWPS		\$49.74	

Qwest Platform Plus™ (QPP™) Rate Page - Washington

	USOC	Recurring	Non-Recurring	Notes
109.11.1.3.27	Facility Restriction Level, per System	FRKPS	\$30.60	
109.11.1.3.28	Group Intercom	GCN	\$0.32	
109.11.1.3.29	Hot Line, per Line	HLA, HLN	\$0.70	
109.11.1.3.30	Hunting: Multiposition Hunt Queuing	MH5	\$26.29	
109.11.1.3.31	Hunting: Multiposition with Announcement in Queue	MHW	\$26.69	
109.11.1.3.32	Hunting: Multiposition with Music in Queue	MOHPS	\$26.69	
109.11.1.3.33	ISDN Short Hunt	NHGPG	\$1.18	
109.11.1.3.34	Loudspeaker Paging, per Trunk Group	PTQPG	\$122.09	
109.11.1.3.35	Make Busy Arrangements, per Group	A9AEX, P89	\$0.46	
109.11.1.3.36	Make Busy Arrangements, per Line	MB1	\$0.46	
109.11.1.3.37	Message Center, per Main Station Line	MFR	\$0.24	
109.11.1.3.38	Message Waiting Visual	MV5	\$0.24	
109.11.1.3.39	Music On Hold, per System	MHHPS	\$16.00	
109.11.1.3.40	Privacy Release	K7KPK	\$0.33	
109.11.1.3.41	Query Time	QT1PK	\$0.24	
109.11.1.3.42	SMDR-P - Archived Data	SR7CX	\$122.62	
109.11.1.3.43	SMDR-P - Service Establishment Charge, Initial Installation	SEPSR, SEPSR	\$228.40	
109.11.1.3.44	Station Camp-On Service, per Main Station	CPK	\$0.24	
109.11.1.3.45	Time of Day Control for ARS, per System	ATBPS	\$87.02	
109.11.1.3.46	Time of Day NCOS Update	A4T	\$0.37	
109.11.1.3.47	Time of Day Routing, per Line	ATBPS	\$0.36	
109.11.1.3.48	Trunk Verification from Designated Station	BVS	\$0.27	
109.11.1.3.49	UCD in Hunt Group, per Line	MHM, H6U, NZT	\$0.46	
109.11.1.4	Premium Port Features - Additional Charge		\$2.00	
109.11.1.4.1	CMS - System Establishment - Initial Installation		\$671.97	
109.11.1.4.2	CMS - System Establishment - Subsequent Installation		\$335.99	
109.11.1.4.3	CMS - Packet Control Capability, per System		\$335.99	
109.11.1.4.4	Conference Calling - Meet Me		\$29.38	
109.11.1.4.5	Conference Calling - Preset		\$29.38	
109.11.1.5	Other			
109.11.1.5.1	Custom Number		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.11.1.5.3	PBX DID Complex Translations Digits Outpulsed Change Signaling		\$9.93	
109.11.1.5.4	PBX DID Complex Translations Signaling Change		\$23.18	
109.11.1.5.5	PBX DID Block Compromise		\$9.21	
109.11.1.5.6	PBX DID Group of 20 Numbers, Installation		\$6.75	
109.11.1.5.7	PBX DID Group of 20 Numbers, Disconnection		\$5.59	
109.11.1.5.8	PBX DID Reserve Sequential # Block		\$9.10	
109.11.1.5.9	PBX DID Reserve Nonsequential Telephone Number		\$7.95	
109.11.1.5.10	PBX DID Nonsequential Telephone Number, Installation		\$7.95	
109.11.1.5.11	PBX DID Nonsequential Telephone Number, Disconnection		\$5.53	
109.11.2	Subsequent Order Charge	NHCUU	\$5.48	4
109.11.3	Qwest Corporation (QC) IntraLATA Toll, LPIC 5123		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.20	Miscellaneous Charges			5, 6
109.20.1	Non-Design			
109.20.1.1	Trouble Isolation Charge (TIC)	MCE	See Maintenance of Service, Basic, First Interval	
109.20.2	Design			
109.20.2.1	Maintenance of Service			
109.20.2.1.1	Basic			
109.20.2.1.1.1	First Increment	MVWXX	See Maintenance	
109.20.2.1.1.2	Each Additional Increment	MVW1X		
109.20.2.1.2	Overtime			
109.20.2.1.2.1	First Increment	MVWOX	See Maintenance	
109.20.2.1.2.2	Each Additional Increment	MVW2X		
109.20.2.1.3	Premium			
109.20.2.1.3.1	First Increment	MVWPX	See Maintenance	
109.20.2.1.3.2	Each Additional Increment	MVW3X		
109.20.2.2	Optional Testing (Additional Labor)			
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX	See Additional Labor - Other	
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX		
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX		

Qwest Platform Plus™ (QPP™) Rate Page - Washington

		USOC	Recurring	Non-Recurring	Notes
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC		See Additional	
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM			
109.20.3	Design and Non-Design				
109.20.3.1	Trip Charge - Premises Visit Charge	SCO		See Additional Dispatch	
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
109.20.3.2.1.1	First Increment	HRD11		See Additional	
109.20.3.2.1.2	Each Additional Increment	HRDA1			
109.20.3.2.2	Overtime				
109.20.3.2.2.1	First Increment	HRD12		See Additional	
109.20.3.2.2.2	Each Additional Increment	HRDA2			
109.20.3.2.3	Premium				
109.20.3.2.3.1	First Increment	HRD13		See Additional	
109.20.3.2.3.2	Each Additional Increment	HRDA3			
109.20.3.3	Date Change			\$6.40	
109.20.3.4	Design Change			\$50.45	
109.20.3.5	Expedite Charge			ICB	7
109.20.3.6	Cancellation Charge			ICB	7
109.23	Qwest Platform Plus™ (QPP™)				
109.23.1	Conversion Nonrecurring Charges				
109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.1.1.1	First Line (Mechanized)	URCCU		\$0.37	
109.23.1.1.2	Each Additional Line (Mechanized)	URCCY		\$0.14	
109.23.1.1.3	First Line (Manual)	URCCV		\$5.42	
109.23.1.1.4	Each Additional Line (Manual)	URCCZ		\$2.71	
109.23.1.2	QPP™ PBX DID Trunks				
109.23.1.2.1	First Trunk	URCCD		\$5.73	
109.23.1.2.2	Each Additional			\$2.99	
109.23.1.3	QPP™ ISDN BRI	URCCU			
109.23.1.3.1	First			\$5.73	
109.23.1.3.2	Each Additional			\$2.99	
109.23.2	Installation Nonrecurring Charges				
109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.2.1.1	First Line (Mechanized)	NHCRA		\$39.03	
109.23.2.1.2	Each Additional Line (Mechanized)			\$11.94	
109.23.2.1.3	Disconnection, First Line (Mechanized)			\$1.75	
109.23.2.1.4	Disconnection, Each Additional Line (Mechanized)			\$1.44	
109.23.2.1.5	First Line (Manual)			\$49.82	
109.23.2.1.6	Each Additional Line (Manual)			\$13.72	
109.23.2.1.7	Disconnection, First Line (Manual)			\$9.57	
109.23.2.1.8	Disconnection, Each Additional Line (Manual)	NHCRC		\$1.44	
109.23.2.2	QPP™ Analog DID PBX Trunks			\$175.66	
109.23.2.3	QPP™ ISDN-BRI				
109.23.2.3.1	First			\$140.13	
109.23.2.3.2	Disconnect			\$44.99	
109.23.3	Qwest AIN Features		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's PCAT)		8
109.23.4	Qwest DSL		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's PCAT)		8
109.23.5	Qwest Voice Messaging Services		See Applicable Qwest Retail Tariff, Catalog or Price List less Discount		8
112	Operational Support Systems				
112.1	Developments and Enhancements, per Local Service Request			\$3.27	
112.2	Ongoing Maintenance, per Local Service Request			\$3.76	
112.3	Daily Usage Records File, per Record		\$0.0011		

Notes

- 1 Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- 2 QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are

Qwest Platform Plus™ (QPP™) Rate Page - Washington

	USOC	Recurring	Non-Recurring	Notes
applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.				
3 USOCs have been provided in an effort to ease item description and USOC association with charges. In the event USOCs are inaccurate or are revised, Qwest reserves the right to correct the Rate Sheet.				
4 The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension of Service, denying or restoring service, adding, removing, or changing features, and other similar requests.				
5 QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".				
6 All charges and increments shall be the same as the comparable charges and increments in each state SGAT.				
7 Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge. The charge MCI and Qwest have agreed upon will be binding to all CLECs.				
8 Where the service has been deemed to be a Telecommunications Service, the Discount will be provided pursuant to CLEC's ICA. Where the service is not a Telecommunications Service, the discount will be 18%.				

Qwest Platform Plus™ (QPP™) Rate Page - Port Rate Increases

The price of the port will be increased by the amounts indicated effective on the dates set forth below.

QPP™ Residential Port Rate Increases If Incentive Thresholds Are Met:

	01/01/05	01/01/06	01/01/07
AZ	\$1.56	\$1.89	\$2.16
CO	\$2.34	\$2.84	\$3.24
ID	\$1.17	\$1.42	\$1.62
IA	\$1.17	\$1.42	\$1.62
MN	\$2.34	\$2.84	\$3.24
MT	\$1.17	\$1.42	\$1.62
NE	\$1.17	\$1.42	\$1.62
NM	\$1.56	\$1.89	\$2.16
ND	\$1.17	\$1.42	\$1.62
OR	\$1.17	\$1.42	\$1.62
SD	\$1.17	\$1.42	\$1.62
UT	\$1.56	\$1.89	\$2.16
WA	\$1.56	\$1.89	\$2.16
WY	\$1.17	\$1.42	\$1.62

QPP™ Residential Port Rate Increases If Incentive Thresholds are NOT met:

	01/01/05	01/01/06	01/01/07
AZ	\$1.56	\$2.10	\$2.40
CO	\$2.34	\$3.15	\$3.60
ID	\$1.17	\$1.58	\$1.80
IA	\$1.17	\$1.58	\$1.80
MN	\$2.34	\$3.15	\$3.60
MT	\$1.17	\$1.58	\$1.80
NE	\$1.17	\$1.58	\$1.80
NM	\$1.56	\$2.10	\$2.40
ND	\$1.17	\$1.58	\$1.80
OR	\$1.17	\$1.58	\$1.80
SD	\$1.17	\$1.58	\$1.80
UT	\$1.56	\$2.10	\$2.40
WA	\$1.56	\$2.10	\$2.40
WY	\$1.17	\$1.58	\$1.80

QPP™ Business Port Rate Increases If Incentive Thresholds Are Met:

	01/01/05	01/01/06	01/01/07
AZ	\$2.70	\$4.35	\$6.26
CO	\$2.70	\$4.35	\$6.26
ID	\$2.70	\$3.41	\$4.38
IA	\$2.70	\$3.73	\$5.02
MN	\$2.70	\$4.35	\$6.26
MT	\$2.70	\$3.41	\$4.38
NE	\$2.70	\$4.35	\$6.26
NM	\$2.70	\$3.10	\$3.76
ND	\$2.70	\$4.35	\$6.26
OR	\$2.70	\$3.10	\$3.76
SD	\$2.70	\$4.35	\$6.26
UT	\$2.70	\$3.41	\$4.38
WA	\$2.70	\$4.35	\$6.26
WY	\$1.52	\$1.63	\$1.88

QPP™ Business Port Rate Increases If Incentive Thresholds Are NOT Met:

	01/01/05	01/01/06	01/01/07
AZ	\$2.70	\$4.83	\$6.96
CO	\$2.70	\$4.83	\$6.96
ID	\$2.70	\$3.79	\$4.87
IA	\$2.70	\$4.14	\$5.58
MN	\$2.70	\$4.83	\$6.96
MT	\$2.70	\$3.79	\$4.87
NE	\$2.70	\$4.83	\$6.96
NM	\$2.70	\$3.44	\$4.18
ND	\$2.70	\$4.83	\$6.96
OR	\$2.70	\$3.44	\$4.18
SD	\$2.70	\$4.83	\$6.96
UT	\$2.70	\$3.79	\$4.87
WA	\$2.70	\$4.83	\$6.96
WY	\$1.52	\$1.81	\$2.09

**AMENDMENT TO INTERCONNECTION AGREEMENT
FOR ELIMINATION OF UNE-P AND
IMPLEMENTATION OF BATCH HOT CUT PROCESS AND DISCOUNTS
between
Qwest Corporation and Eschelon Telecom of Oregon, Inc.
for the State of Oregon**

This Agreement is entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and Eschelon Telecom of Oregon, Inc.(f/k/a Eschelon Telecom of Washington, Inc. and American Telephone Technology, Inc.) ("CLEC"), a Delaware corporation effective as of the Effective Date, defined below. Qwest and CLEC shall be known jointly as the "Parties".

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement for services in the state of Oregon (the "ICA"), which was approved by the Oregon Public Utility Commission ("Commission") on February 8, 2000, as referenced Docket No. ARB-199; and

WHEREAS, the Parties may during the Term of this Amendment enter into new Interconnection Agreement(s) and/or amend existing Interconnection Agreement(s);

WHEREAS, CLEC previously purchased on an unbundled basis from Qwest certain combinations of network elements, ancillary functions, and additional features, including without limitation the local Loop, port, switching, and shared transport combination commonly known as Unbundled Network Element Platform ("UNE-P");

WHEREAS such UNE-P arrangements were previously obtained by CLEC under the terms and conditions of certain Interconnection Agreements including without limitation in certain states Qwest's Statement of Generally Available Terms;

WHEREAS both CLEC and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d 554 (March 2, 2004), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act (the "Act");

WHEREAS to address such uncertainty and to create a stable arrangement for the continued availability to CLEC from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements the parties have contemporaneously entered into a Master Service Agreement for the provision of Qwest Platform Plus™ service (the "QPP™ MSA"); and

WHEREAS, the Parties have agreed to the following terms and conditions which during the Term of this Amendment are intended to supplement in part and supercede in part the terms and conditions of their existing Interconnection Agreement and any new Interconnection Agreements they may enter into.

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:

Section 1.0 – Definitions

“Batch Hot Cut” refers to a hot cut performed pursuant to the Batch Hot Cut Process described in Attachment A.

“Individual Hot Cut” refers to a hot cut that is not performed pursuant to a batch process.

“UNE-P” means Unbundled Network Element – Platform. For purposes of this Agreement, UNE-P includes the product purchased by Eschelon under its Interconnection Agreement which is sometimes referred to as “UNE-E” (Unbundled Network Element – Eschelon).

Section 2.0 – General Terms and Conditions

2.1 Effective Date. This Amendment shall become effective upon the latest execution date by the Parties (“Effective Date”).

2.2 Term. The term of this Amendment shall begin on the Effective Date and shall remain in effect through July 31, 2008. At any time within 6 months prior to expiration of the Amendment either Party may provide notice of renegotiation. Upon mutual agreement, the term of the Amendment may be extended upon the same terms and conditions for no more than one (1) six month extension period. If the QPP MSA is terminated (for reasons other than material breach) by CLEC with respect to a particular state, this Amendment shall, by its own terms and notwithstanding any requirement that subsequent modifications or amendments be in writing signed by both Parties, automatically be terminated in that state, and CLEC shall be free thereafter to pursue any available means to purchase UNE-P or equivalent services from Qwest.

2.3 Scope of Amendment. The provisions of this Amendment are intended to amend and supercede those provisions of CLEC’s existing and all future Interconnection or other Agreements only as they relate to the offering of Unbundled mass market Switching or Unbundled enterprise Switching and Unbundled Shared Transport in combination with other network elements as part of the Unbundled Network Element Platform, and Batch Hot Cuts, as defined below (collectively, the “Services”). The Services and related terms and conditions described in this Agreement are applicable only in Qwest’s incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

2.4 Existing Rules. The provisions in this Amendment are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of June 17, 2004 (the “Existing Rules”). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

2.5 Change of Law. If a change in law, rule, or regulation materially impairs a party's ability to perform or obtain a benefit under this Amendment, both parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

2.6 Regulatory Approval. In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Amendment, either party may immediately upon written notice to the other Party terminate this Amendment and the QPP MSA.

2.7 Entire Agreement. Other than the publicly filed Agreement and its Amendments, the QPP MSA and its amendments, addendums, and exhibits, Qwest and Eschelon have no agreement or understanding, written or oral, relating to the terms and conditions of the subjects of this Amendment.

Section 3.0 – Batch Hot Cut Terms and Conditions

3.1 Individual Hot Cuts. All hot cuts, except for those hot cuts performed pursuant to a batch process, will be provided by Qwest to CLEC at the rates, terms and conditions set forth in CLEC's Interconnection Agreement.

3.2 Batch Hot Cut Process. Upon deployment of the Batch Hot Cut Status Tool and amendment of Appointment Scheduler to accommodate Batch Hot Cut orders, Qwest shall provide Batch Hot Cuts to CLEC upon the rates, terms and conditions set forth in this Agreement. The Parties agree to follow the Batch Hot Cut Process described in Attachment A. CLEC agrees to use commercially reasonable efforts to use the Batch Hot Cut Process under this Agreement even in states in which the Individual Hot Cut rate is lower than the Batch Hot Cut Rate.

3.3 Batch Hot Cut Rates: The base Batch Hot Cut price is \$27.50 per line unless the incentive thresholds below are met. If the number of CLEC's QPP™ lines as of October 31, 2005 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2004, the Batch Hot Cut rate for CLEC will be reduced to \$23 per line for Batch Hot Cuts performed during the time period from January 1, 2006 through December 31, 2006. If the number of CLEC's QPP™ lines as of October 31, 2006 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2005, the Batch Hot Cut rate for CLEC will be reduced to \$18.50 per line for Batch Hot Cuts performed during the time period from January 1, 2007 through end of the term of this Amendment. For purposes of this section, the number of QPP™ lines and the sum of QPP™ and UNE-P lines shall be calculated on a regionwide basis that includes all states in which this Amendment is in effect.

3.4 Batch Hot Cut Rate Adjustment: If after the Effective Date, for a state in which the Individual Hot Cut rate is higher than the Batch Hot Cut Rates under this Amendment (inclusive of the discounts set forth in Section 3.3) as of the Effective Date, the rate for Individual Hot Cuts in such state is subsequently lowered below the Batch Hot Cut Rates contained in this Amendment (inclusive of the discounts set forth in Section 3.3), then the Batch Hot Cut rates under this Amendment (including the discounted rates set forth in Section 3.3) that are higher than the newly-lowered state rate for Individual Hot Cuts will be automatically adjusted downward prospectively (with such new rates being implemented for CLEC region-wide for all fourteen states) by an amount equal to the difference in the newly-lowered state Individual Hot Cut rate and each higher Batch Hot Cut Rate under this Amendment multiplied by the

percentage of Qwest local service lines in that state compared to the total number of Qwest in-region local service lines.

Example 1: The individual hot cut rate in Arizona is lowered from the current TELRIC rate to \$30.00 per line. Because \$30.00 is higher than the Batch Hot Cut Rates under this Amendment, there would be no adjustment.

Example 2: The individual hot cut rate in Montana is lowered on January 1, 2006 from the current TELRIC rate to \$20.00 per line. The \$27.50 and \$23.00 Batch Hot Cut Rates (but not the \$18.50 rate) shall be reduced effective January 1, 2006 as follows.

New lowered Batch Hot Cut Rate = \$27.50 - ((\$27.50 - \$20.00) x (Number of Qwest local service lines in Montana / Total number of Qwest local service lines in Qwest's fourteen state territory))

New lowered Batch Hot Cut Rate = \$23.00 - ((\$23.00 - \$20.00) x (Number of Qwest local service lines in Montana / Total number of Qwest local service lines in Qwest's fourteen state territory))

3.5 Batch Hot Cut Tools. Qwest is in the process of developing a Batch Hot Cut Scheduling Tool and a Batch Hot Cut Status Tool. CLEC understands that these Tools will not be available until IMA 16.0 is released and CLEC will not be able to submit requests for Batch Hot Cuts until IMA 16.0 is released. Qwest shall use best reasonable commercial efforts to release IMA 16.0 by December 31, 2004. The Batch Hot Cut Scheduling Tool will be enhanced in a future IMA release if and to the extent the enhancement is supported by the CLEC community. If approved, the enhancement will include the ability to reserve due dates for IDLC in cumulative batches of no more than 40 IDLC Loops per state per day. Qwest and CLEC agree to support as a high priority the enhancement for IDLC inclusion in the Batch Hot Cut Scheduling Tool and will work this through the systems prioritizations procedures in the Qwest Wholesale Change Management Process. Qwest and CLEC will rank this enhancement change request within the top twenty-five percent (25%) of all change requests to be prioritized through the Qwest Wholesale Change Management Process when this change request is prioritized. The Parties agree to the following service assurance approach for these Tools:

3.5.1 Batch Hot Cut Scheduling Tool Availability. To the extent that there is a systems failure that exceeds forty-eight (48) hours and creates an inability to request a Batch Hot Cut, Qwest will work in good faith with CLEC to develop a negotiated settlement with respect to the cost difference between the Qwest QPP™ monthly recurring charge (MRC) and the Unbundled Loop MRC times the number of days that CLEC was unable to order a Batch Hot Cut. Settlement discussions would be initiated upon the written request of CLEC.

3.5.2 Batch Hot Cut Status Tool System Refresh Timeliness. After the deployment of the Batch Hot Cut Status Tool, Qwest and CLEC will work cooperatively to review the system logic and processes in an effort to determine an appropriate measurement approach. The parties agree to take the least-cost approach to capture this performance experience.

3.6 The Batch Hot Cut pricing provisions in this Amendment are subject to the following conditions:

A. Integrated Digital Loop Carrier (“IDLC”) is not a part of the standard Batch Hot Cut process. However, the pricing for Batch Hot Cuts will apply to IDLC Loops. IDLC Loops will be batched together in quantities of no more than 40 IDLC Loops per state, per day.

B. Line Splitting to Loop Splitting conversions can be included the Batch Hot Cut process at the same pricing for Batch Hot Cuts stated above. For purposes of this Section, a Line Splitting to Loop Splitting conversion means a conversion from Qwest as the switch provider to a CLEC switch provider where the data or DLEC provider and the Loop remain the same.

C. Batch Hot Cut limits are in effect as established in the Batch Hot Cut Process described in Attachment A.

Section 4.0 – Removal of UNE-P, Enterprise and Mass Market Switching and Shared Transport from Interconnection Agreement(s)

4.1 Agreement Not to Order. During the term of this Agreement Qwest shall not offer or provide to CLEC, and CLEC shall not order or purchase from Qwest, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of UNE-P out of its existing Interconnection Agreement(s) with Qwest, a Qwest SGAT or any other Interconnection Agreement governed by 47 U.S.C. §§251 and 252 that CLEC or one of its affiliates may in the future enter into with Qwest and CLEC waives any right under applicable law in connection therewith. Notwithstanding the foregoing, nothing in this Section shall prevent Qwest from offering or providing QPP™ services to CLEC, or CLEC from ordering or purchasing QPP™ services from Qwest. The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on CLEC or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of material breach by CLEC).

Section 5.0 Other Terms and Conditions of Interconnection Agreements

5.1 Other Interconnection Terms. This Amendment is not intended to alter, adjust or extend existing interconnection arrangements between Qwest and CLEC except as expressly set forth herein and all such other interconnection arrangements and related terms and conditions shall remain in full force and effect.

5.2 CLEC may use Qwest's Directory Assistance Services or operator services and may arrange to provide access to its own, or to a third party's, directory assistance or operator services platform. Qwest Branded Operator Services and Directory Assistance may be purchased by CLEC pursuant to the terms of the applicable ICA, SGAT, or tariff. CLEC Branded Operator Services and Directory Assistance will also be available from Qwest using Originating Line Number Screening (“OLNS”). Qwest will provide CLEC nondiscriminatory access to Qwest’s Directory Assistance Listings.

5.3 Line splitting will be available for Loops provided pursuant to the ICA, such that CLEC may provide DSL service using the high-frequency portion of such a Loop and a CLEC-provided splitter, or CLEC may contract with a third-party CLEC to provide such DSL service to an CLEC End User Customer over the high frequency portion of the Loop. The Loop pre-qualification, ordering, provisioning, repair, maintenance and other support functions and services to support CLECs use of line splitting in connection with Loops shall be provided as set forth in the ICA.

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.

Eschelon Telecom of Oregon, Inc.

Qwest Corporation

Signature

Signature

Richard A. Smith
Name Printed/Typed

L. T. Christensen
Name Printed/Typed

CEO/President
Title

Director – Interconnection Agreements
Title

Date

Date

Attachment A: Batch Hot Cut Process

The Batch Hot Cut (BHC) installation option permits CLEC to migrate existing defined analog services to a two or four (2/4) wire analog Unbundled Loop in those instances where existing facilities currently serving the end-user customer can be reused without requiring a field technician dispatch. Except as defined below, existing analog services provisioned over Integrated Digital Loop Carrier (IDLC) or originating out of a Remote Switching Unit (RSU) and terminating on an exchange (EX) cable are not eligible for the BHC because the dispatch of a field technician would be required. In addition, the coordination provisioning options for Unbundled Loops are not available when using the BHC process.

A. The BHC process is available to migrate to unbundled Loops from the following services whether they be in Qwest retail, Qwest resale, Qwest UNE-P, or Qwest Platform Plus™ (QPP™) formats: Residential POTS, Business POTS, Centrex 21, Centrex Plus/Centron, Analog DID, and public access lines.

1. The BHC process is also available to convert a line split Loop as defined in Section 9.21 of Qwest's SGAT using one of the aforementioned types of UNE-P or QPP™ lines to a Loop splitting arrangement. This option will be made available upon the development of systems upgrade to accommodate such a request. Qwest will use best reasonable commercial efforts to deploy this capability by December 31, 2004 coincident with IMA release 16.0.

2. A modified BHC process can be used to transition Loops currently provisioned over IDLC. In that circumstance, the IDLC batch must be made up exclusively of lines currently provisioned over IDLC, and identified and designated as such by CLEC using one of Qwest's Loop qualification tools. In those circumstances, the IDLC batch will consist of no more than 40 Loops per state per day. Qwest's scheduling tool will be enhanced in a future IMA release if and to the extent the enhancement is supported by the CLEC community. If approved, the enhancement will include the ability to reserve due dates for IDLC in cumulative batches of no more than 40 IDLC Loops per state per day. Qwest and CLEC agree to support as a high priority the enhancement for IDLC inclusion in the scheduling tool and will work this through the systems prioritizations procedures in the Qwest Wholesale Change Management Process. Qwest and CLEC will rank this enhancement change request within the top twenty-five percent (25%) of all change requests to be prioritized through the Qwest Wholesale Change Management Process when this change request is prioritized.

B. Except as set forth above for IDLC batches, the BHC must be for a minimum of twenty-five (25) Unbundled Loops per CLEC per Central Office and a maximum of one hundred (100) Unbundled Loops among all CLECs per Central Office, per day. There is also a fourteen (14) state region-wide maximum for all CLECs of two thousand five hundred (2,500) Loops per day for all of Qwest's Central Offices.

C. The BHC option is available during standard unbundled Loop business days, which are defined in the Provisioning and Installation Procedural PCAT. The Due Date for the BHC process is set by a standard seven (7) business day installation interval.

Qwest will complete provisioning of the Loops associated with a particular batch between 3:00 a.m. and 11:00 a.m. local time on the Due Date.

D. Before CLEC submits any orders for unbundled Loops using the BHC process, CLEC and Qwest agree to schedule a meeting in order to create a CLEC specific migration plan, if such plan is required. The migration plan shall include CO by CO prioritization, volumes by CO, overall timeframe of migration to be agreed upon between CLEC and Qwest. The jointly developed CLEC migration plan will be assigned a priority based upon its creation date, in the event multiple CLECs contend for batch hot cuts in similar geographies and exceed volume thresholds as defined in Section B above. Upon mutual agreement, the priority assigned to all or part of the jointly developed CLEC migration plan may change. In this event, Qwest will coordinate with all parties to create an overall migration plan that considers everyone's priorities and expectations.

1. If CLEC and Qwest are unable to reach a consensus on the migration plan, any affected party shall have the right to appeal the migration plan to the State Commission, and to seek expedited relief.
2. Once the migration plan is completed, the migration date for CLEC's requests included in the BHC is established by CLEC through the use of the appointment scheduling tool. All requests submitted in the appointment scheduling tool will be processed on a first come, first served basis until the Central Office maximum volume of one hundred (100) Unbundled Loop migrations per day is reached or the two thousand five hundred (2,500) region-wide per day maximum BHC volume is reached. However, if CLEC is found to have submitted orders that materially alter the agreed upon migration plan, and such order submission precludes another CLEC from submitting orders set forth in its migration plan, CLEC's requests can be limited within the scheduling tool in order to allow space for other CLEC orders.
 - a. Requests beyond the Central Office or the region-wide maximum volume will be scheduled for the next available Due Date.
 - b. If CLEC is unable to reach the minimum volume of twenty-five (25) Unbundled Loop migrations required for a BHC per Central Office, CLEC may reschedule its BHC request to a Due Date when the minimum volume can be met (subject to the migration plans of other CLECs). If CLEC is unable to meet the minimum volume requirement, CLEC may select an alternate Due Date utilizing any of the other six (6) installation options for each individual request.
3. CLEC shall request BHC installation by designating a "B" on its LSR in the CHC field.
4. The Provisioning interval for the BHC is seven (7) business days.
 - a. CLEC agrees to have dial tone present on its CFA by 12:00 a.m. (midnight) local time on the first business day following order submittal.
 - b. Qwest will complete pre-wire of the lines included in the batch (other than IDLC batches) on either the second or third business day of

the Provisioning interval unless Qwest finds no dial tone or if the dial tone is defective (e.g., reversal or wired to the wrong CLEC office equipment) on the pre-wire date. During this time frame if a jeopardy exists, Qwest will notify CLEC of the jeopardy via the BHC Status Tool. During this time frame if a jeopardy exists, CLEC will commit to correct the no dial tone condition and have dial tone available to Qwest by 3:00 a.m. local time on the order Due Date. If CFA changes are required, CLEC will submit a supplement to the LSR by 12:00 p.m. (noon) local time on the fourth business day of the standard interval. If CLEC dial tone is not available or is defective on the Due Date, Qwest will place CLEC's order in jeopardy status and require CLEC to supplement the LSR to establish a new Due Date using either a new batch or using a different installation option.

1. If the jeopardy causes the number of lines in the batch to drop below twenty (20) lines, Qwest reserves the right to reject the entire batch and to place all lines associated with the BHC order into jeopardy status.

2. All related lines to the order placed into jeopardy (e.g. related lines in a business or in a hunt group) shall also be placed into jeopardy status.

c. On both the pre-wire date (as noted above) as well as the lift and lay date (the Due Date), Qwest will test for CLEC dial tone and ANI the line to ensure that CLEC's dial tone is working properly. On the Due Date, if the correct telephone number is working on CLEC's facilities, Qwest will monitor the line and perform the lift and lay. The lift and lay removes CLEC's End User Customer line from the Qwest End Office Switch and migrates the End User Customer's line to CLEC's Switch. Once CLEC has received notification via the BHC status tool, that a line has been migrated, CLEC will have two (2) hours to request that the Unbundled Loop be restored back to its original state. The restoration shall begin immediately upon request by CLEC. No response from CLEC indicates acceptance of the order completion, and Qwest will proceed to disconnect the original service. If CLEC requests removal from the batch, CLEC must issue a new or supplemental LSR to reinitiate the provisioning process for the line(s) in question.

d. Qwest will provision the lines in the batch in the order that makes the most economic sense for Qwest. CLEC will not be able to dictate the order in which the lines will be provisioned, except that multiple lines for a single customer in a single location (including hunt groups) ordered on the same LSR will be provisioned together.

E. The Batch Status Tool will provide CLEC with the current status of its BHC requests for any given central office on an individual line-by-line basis. The Batch Status Tool will return a display that will list status changes on BHC orders occurring for that day. The display will provide the affected telephone numbers, order numbers, related order numbers, CFA, and PON number associated with the BHC requested. Subsequent changes to the status of any order will be noted in the Batch Status Tool.

The Batch Status Tool will provide, on the day of the cut, the start time and the completion time on a line-by-line basis. If CLEC is interested in capturing the exact moment the conversion work is completed, CLEC's current switch should have the capability to capture ("trap") the conversion and issue and request to have the subscription submitted for number porting.

1. Currently, Qwest's BHC Status Tool and amendments to Appointment Scheduler to account for the BHC process are scheduled for deployment on October 18, 2004. Such tools will not be available before that date. The BHC process will not be available as a provisioning option until these tools are deployed.
2. If there is a delay in deployment of these tools, CLEC will be notified using the existing Change Management processes.
3. Once deployed, CLEC must use the Batch Status Tool and Appointment Scheduler to utilize the BHC process.
4. The Batch Hot Cut process defined here will not be in effect until the Batch Status Tool and Appointment Scheduler are developed, tested, and deployed.
5. The IDLC modified batch process will be excluded from the batch scheduling tool until the time when systems modifications and enhancements, in a future IMA release, are in place. However, IDLC conversions will be handled on an exception basis using the manual methods until the time when these modifications and enhancements are in place.

**AMENDMENT TO INTERCONNECTION AGREEMENT
FOR ELIMINATION OF UNE-P AND
IMPLEMENTATION OF BATCH HOT CUT PROCESS AND DISCOUNTS
between
Qwest Corporation and Advanced TelCom, Inc.
for the State of Oregon**

This Agreement is entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and Advanced TelCom Inc. ("CLEC"), a Delaware corporation effective as of the Effective Date, defined below. Qwest and CLEC shall be known jointly as the "Parties".

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement for services in the state of Oregon (the "ICA"), which was approved by the Oregon Public Utility Commission ("Commission") on November 20, 1998, as referenced Docket/Order No. 98-485; and

WHEREAS, the Parties may during the Term of this Amendment enter into new Interconnection Agreement(s) and/or amend existing Interconnection Agreement(s);

WHEREAS, CLEC previously purchased on an unbundled basis from Qwest certain combinations of network elements, ancillary functions, and additional features, including without limitation the local Loop, port, switching, and shared transport combination commonly known as Unbundled Network Element Platform ("UNE-P");

WHEREAS such UNE-P arrangements were previously obtained by CLEC under the terms and conditions of certain Interconnection Agreements including without limitation in certain states Qwest's Statement of Generally Available Terms;

WHEREAS both CLEC and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d 554 (March 2, 2004), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act (the "Act");

WHEREAS to address such uncertainty and to create a stable arrangement for the continued availability to CLEC from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements the parties have contemporaneously entered into a Master Service Agreement for the provision of Qwest Platform Plus™ service (the "QPP™ MSA"); and

WHEREAS, the Parties have agreed to the following terms and conditions which during the Term of this Amendment are intended to supplement in part and supercede in part the terms and conditions of their existing Interconnection Agreement and any new Interconnection Agreements they may enter into.

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:

Section 1.0 – Definitions

“Batch Hot Cut” refers to a hot cut performed pursuant to the Batch Hot Cut Process described in Attachment A.

“Individual Hot Cut” refers to a hot cut that is not performed pursuant to a batch process.

“UNE-P” means Unbundled Network Element – Platform. For purposes of this Agreement, UNE-P includes the product purchased by Eschelon under its Interconnection Agreement which is sometimes referred to as “UNE-E” (Unbundled Network Element – Eschelon).

Section 2.0 – General Terms and Conditions

2.1 Effective Date. This Amendment shall become effective upon the latest execution date by the Parties (“Effective Date”).

2.2 Term. The term of this Amendment shall begin on the Effective Date and shall remain in effect through July 31, 2008. At any time within 6 months prior to expiration of the Amendment either Party may provide notice of renegotiation. Upon mutual agreement, the term of the Amendment may be extended upon the same terms and conditions for no more than one (1) six month extension period. If the QPP MSA is terminated (for reasons other than material breach) by CLEC with respect to a particular state, this Amendment shall, by its own terms and notwithstanding any requirement that subsequent modifications or amendments be in writing signed by both Parties, automatically be terminated in that state, and CLEC shall be free thereafter to pursue any available means to purchase UNE-P or equivalent services from Qwest.

2.3 Scope of Amendment. The provisions of this Amendment are intended to amend and supercede those provisions of CLEC’s existing and all future Interconnection or other Agreements only as they relate to the offering of Unbundled mass market Switching or Unbundled enterprise Switching and Unbundled Shared Transport in combination with other network elements as part of the Unbundled Network Element Platform, and Batch Hot Cuts, as defined below (collectively, the “Services”). The Services and related terms and conditions described in this Agreement are applicable only in Qwest’s incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

2.4 Existing Rules. The provisions in this Amendment are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of June 17, 2004 (the “Existing Rules”). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

2.5 Change of Law. If a change in law, rule, or regulation materially impairs a party's ability to perform or obtain a benefit under this Amendment, both parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

2.6 Regulatory Approval. In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Amendment, either party may immediately upon written notice to the other Party terminate this Amendment and the QPP MSA.

2.7 Entire Agreement. Other than the publicly filed Agreement and its Amendments, the QPP MSA and its amendments, addendums, and exhibits, Qwest and Eschelon have no agreement or understanding, written or oral, relating to the terms and conditions of the subjects of this Amendment.

Section 3.0 – Batch Hot Cut Terms and Conditions

3.1 Individual Hot Cuts. All hot cuts, except for those hot cuts performed pursuant to a batch process, will be provided by Qwest to CLEC at the rates, terms and conditions set forth in CLEC's Interconnection Agreement.

3.2 Batch Hot Cut Process. Upon deployment of the Batch Hot Cut Status Tool and amendment of Appointment Scheduler to accommodate Batch Hot Cut orders, Qwest shall provide Batch Hot Cuts to CLEC upon the rates, terms and conditions set forth in this Agreement. The Parties agree to follow the Batch Hot Cut Process described in Attachment A. CLEC agrees to use commercially reasonable efforts to use the Batch Hot Cut Process under this Agreement even in states in which the Individual Hot Cut rate is lower than the Batch Hot Cut Rate.

3.3 Batch Hot Cut Rates: The base Batch Hot Cut price is \$27.50 per line unless the incentive thresholds below are met. If the number of CLEC's QPP™ lines as of October 31, 2005 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2004, the Batch Hot Cut rate for CLEC will be reduced to \$23 per line for Batch Hot Cuts performed during the time period from January 1, 2006 through December 31, 2006. If the number of CLEC's QPP™ lines as of October 31, 2006 equals or exceeds 90% of the sum of CLEC's QPP™ and UNE-P lines as of October, 31, 2005, the Batch Hot Cut rate for CLEC will be reduced to \$18.50 per line for Batch Hot Cuts performed during the time period from January 1, 2007 through end of the term of this Amendment. For purposes of this section, the number of QPP™ lines and the sum of QPP™ and UNE-P lines shall be calculated on a regionwide basis that includes all states in which this Amendment is in effect.

3.4 Batch Hot Cut Rate Adjustment: If after the Effective Date, for a state in which the Individual Hot Cut rate is higher than the Batch Hot Cut Rates under this Amendment (inclusive of the discounts set forth in Section 3.3) as of the Effective Date, the rate for Individual Hot Cuts in such state is subsequently lowered below the Batch Hot Cut Rates contained in this Amendment (inclusive of the discounts set forth in Section 3.3), then the Batch Hot Cut rates under this Amendment (including the discounted rates set forth in Section 3.3) that are higher than the newly-lowered state rate for Individual Hot Cuts will be automatically adjusted downward prospectively (with such new rates being implemented for CLEC region-wide for all fourteen states) by an amount equal to the difference in the newly-lowered state Individual Hot Cut rate and each higher Batch Hot Cut Rate under this Amendment multiplied by the

percentage of Qwest local service lines in that state compared to the total number of Qwest in-region local service lines.

Example 1: The individual hot cut rate in Arizona is lowered from the current TELRIC rate to \$30.00 per line. Because \$30.00 is higher than the Batch Hot Cut Rates under this Amendment, there would be no adjustment.

Example 2: The individual hot cut rate in Montana is lowered on January 1, 2006 from the current TELRIC rate to \$20.00 per line. The \$27.50 and \$23.00 Batch Hot Cut Rates (but not the \$18.50 rate) shall be reduced effective January 1, 2006 as follows.

New lowered Batch Hot Cut Rate = \$27.50 - ((\$27.50 - \$20.00) x (Number of Qwest local service lines in Montana / Total number of Qwest local service lines in Qwest's fourteen state territory))

New lowered Batch Hot Cut Rate = \$23.00 - ((\$23.00 - \$20.00) x (Number of Qwest local service lines in Montana / Total number of Qwest local service lines in Qwest's fourteen state territory))

3.5 Batch Hot Cut Tools. Qwest is in the process of developing a Batch Hot Cut Scheduling Tool and a Batch Hot Cut Status Tool. CLEC understands that these Tools will not be available until IMA 16.0 is released and CLEC will not be able to submit requests for Batch Hot Cuts until IMA 16.0 is released. Qwest shall use best reasonable commercial efforts to release IMA 16.0 by December 31, 2004. The Batch Hot Cut Scheduling Tool will be enhanced in a future IMA release if and to the extent the enhancement is supported by the CLEC community. If approved, the enhancement will include the ability to reserve due dates for IDLC in cumulative batches of no more than 40 IDLC Loops per state per day. Qwest and CLEC agree to support as a high priority the enhancement for IDLC inclusion in the Batch Hot Cut Scheduling Tool and will work this through the systems prioritizations procedures in the Qwest Wholesale Change Management Process. Qwest and CLEC will rank this enhancement change request within the top twenty-five percent (25%) of all change requests to be prioritized through the Qwest Wholesale Change Management Process when this change request is prioritized. The Parties agree to the following service assurance approach for these Tools:

3.5.1 Batch Hot Cut Scheduling Tool Availability. To the extent that there is a systems failure that exceeds forty-eight (48) hours and creates an inability to request a Batch Hot Cut, Qwest will work in good faith with CLEC to develop a negotiated settlement with respect to the cost difference between the Qwest QPP™ monthly recurring charge (MRC) and the Unbundled Loop MRC times the number of days that CLEC was unable to order a Batch Hot Cut. Settlement discussions would be initiated upon the written request of CLEC.

3.5.2 Batch Hot Cut Status Tool System Refresh Timeliness. After the deployment of the Batch Hot Cut Status Tool, Qwest and CLEC will work cooperatively to review the system logic and processes in an effort to determine an appropriate measurement approach. The parties agree to take the least-cost approach to capture this performance experience.

3.6 The Batch Hot Cut pricing provisions in this Amendment are subject to the following conditions:

A. Integrated Digital Loop Carrier (“IDLC”) is not a part of the standard Batch Hot Cut process. However, the pricing for Batch Hot Cuts will apply to IDLC Loops. IDLC Loops will be batched together in quantities of no more than 40 IDLC Loops per state, per day.

B. Line Splitting to Loop Splitting conversions can be included the Batch Hot Cut process at the same pricing for Batch Hot Cuts stated above. For purposes of this Section, a Line Splitting to Loop Splitting conversion means a conversion from Qwest as the switch provider to a CLEC switch provider where the data or DLEC provider and the Loop remain the same.

C. Batch Hot Cut limits are in effect as established in the Batch Hot Cut Process described in Attachment A.

Section 4.0 – Removal of UNE-P, Enterprise and Mass Market Switching and Shared Transport from Interconnection Agreement(s)

4.1 Agreement Not to Order. During the term of this Agreement Qwest shall not offer or provide to CLEC, and CLEC shall not order or purchase from Qwest, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of UNE-P out of its existing Interconnection Agreement(s) with Qwest, a Qwest SGAT or any other Interconnection Agreement governed by 47 U.S.C. §§251 and 252 that CLEC or one of its affiliates may in the future enter into with Qwest and CLEC waives any right under applicable law in connection therewith. Notwithstanding the foregoing, nothing in this Section shall prevent Qwest from offering or providing QPP™ services to CLEC, or CLEC from ordering or purchasing QPP™ services from Qwest. The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on CLEC or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of material breach by CLEC).

Section 5.0 Other Terms and Conditions of Interconnection Agreements

5.1 Other Interconnection Terms. This Amendment is not intended to alter, adjust or extend existing interconnection arrangements between Qwest and CLEC except as expressly set forth herein and all such other interconnection arrangements and related terms and conditions shall remain in full force and effect.

5.2 CLEC may use Qwest's Directory Assistance Services or operator services and may arrange to provide access to its own, or to a third party's, directory assistance or operator services platform. Qwest Branded Operator Services and Directory Assistance may be purchased by CLEC pursuant to the terms of the applicable ICA, SGAT, or tariff. CLEC Branded Operator Services and Directory Assistance will also be available from Qwest using Originating Line Number Screening (“OLNS”). Qwest will provide CLEC nondiscriminatory access to Qwest’s Directory Assistance Listings.

5.3 Line splitting will be available for Loops provided pursuant to the ICA, such that CLEC may provide DSL service using the high-frequency portion of such a Loop and a CLEC-provided splitter, or CLEC may contract with a third-party CLEC to provide such DSL service to an CLEC End User Customer over the high frequency portion of the Loop. The Loop pre-qualification, ordering, provisioning, repair, maintenance and other support functions and services to support CLECs use of line splitting in connection with Loops shall be provided as set forth in the ICA.

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.

Advanced TelCom, Inc.

Qwest Corporation

Signature

Signature

Richard A. Smith
Name Printed/Typed

L. T. Christensen
Name Printed/Typed

CEO/President
Title

Director – Interconnection Agreements
Title

Date

Date

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D. Before CLEC submits any orders for unbundled Loops using the BHC process, CLEC and Qwest agree to schedule a meeting in order to create a CLEC specific migration plan, if such plan is required. The migration plan shall include CO by CO prioritization, volumes by CO, overall timeframe of migration to be agreed upon between CLEC and Qwest. The jointly developed CLEC migration plan will be assigned a priority based upon its creation date, in the event multiple CLECs contend for batch hot cuts in similar geographies and exceed volume thresholds as defined in Section B above. Upon mutual agreement, the priority assigned to all or part of the jointly developed CLEC migration plan may change. In this event, Qwest will coordinate with all parties to create an overall migration plan that considers everyone's priorities and expectations.

1. If CLEC and Qwest are unable to reach a consensus on the migration plan, any affected party shall have the right to appeal the migration plan to the State Commission, and to seek expedited relief.

2. Once the migration plan is completed, the migration date for CLEC's requests included in the BHC is established by CLEC through the use of the appointment scheduling tool. All requests submitted in the appointment scheduling tool will be processed on a first come, first served basis until the Central Office maximum volume of one hundred (100) Unbundled Loop migrations per day is reached or the two thousand five hundred (2,500) region-wide per day maximum BHC volume is reached. However, if CLEC is found to have submitted orders that materially alter the agreed upon migration plan, and such order submission precludes another CLEC from submitting orders set forth in its migration plan, CLEC's requests can be limited within the scheduling tool in order to allow space for other CLEC orders.

- a. Requests beyond the Central Office or the region-wide maximum volume will be scheduled for the next available Due Date.

- b. If CLEC is unable to reach the minimum volume of twenty-five (25) Unbundled Loop migrations required for a BHC per Central Office, CLEC may reschedule its BHC request to a Due Date when the minimum volume can be met (subject to the migration plans of other CLECs). If CLEC is unable to meet the minimum volume requirement, CLEC may select an alternate Due Date utilizing any of the other six (6) installation options for each individual request.

3. CLEC shall request BHC installation by designating a "B" on its LSR in the CHC field.

4. The Provisioning interval for the BHC is seven (7) business days.

- a. CLEC agrees to have dial tone present on its CFA by 12:00 a.m. (midnight) local time on the first business day following order submittal.

- b. Qwest will complete pre-wire of the lines included in the batch (other than IDLC batches) on either the second or third business day of

the Provisioning interval unless Qwest finds no dial tone or if the dial tone is defective (e.g., reversal or wired to the wrong CLEC office equipment) on the pre-wire date. During this time frame if a jeopardy exists, Qwest will notify CLEC of the jeopardy via the BHC Status Tool. During this time frame if a jeopardy exists, CLEC will commit to correct the no dial tone condition and have dial tone available to Qwest by 3:00 a.m. local time on the order Due Date. If CFA changes are required, CLEC will submit a supplement to the LSR by 12:00 p.m. (noon) local time on the fourth business day of the standard interval. If CLEC dial tone is not available or is defective on the Due Date, Qwest will place CLEC's order in jeopardy status and require CLEC to supplement the LSR to establish a new Due Date using either a new batch or using a different installation option.

1. If the jeopardy causes the number of lines in the batch to drop below twenty (20) lines, Qwest reserves the right to reject the entire batch and to place all lines associated with the BHC order into jeopardy status.

2. All related lines to the order placed into jeopardy (e.g. related lines in a business or in a hunt group) shall also be placed into jeopardy status.

c. On both the pre-wire date (as noted above) as well as the lift and lay date (the Due Date), Qwest will test for CLEC dial tone and ANI the line to ensure that CLEC's dial tone is working properly. On the Due Date, if the correct telephone number is working on CLEC's facilities, Qwest will monitor the line and perform the lift and lay. The lift and lay removes CLEC's End User Customer line from the Qwest End Office Switch and migrates the End User Customer's line to CLEC's Switch. Once CLEC has received notification via the BHC status tool, that a line has been migrated, CLEC will have two (2) hours to request that the Unbundled Loop be restored back to its original state. The restoration shall begin immediately upon request by CLEC. No response from CLEC indicates acceptance of the order completion, and Qwest will proceed to disconnect the original service. If CLEC requests removal from the batch, CLEC must issue a new or supplemental LSR to reinitiate the provisioning process for the line(s) in question.

d. Qwest will provision the lines in the batch in the order that makes the most economic sense for Qwest. CLEC will not be able to dictate the order in which the lines will be provisioned, except that multiple lines for a single customer in a single location (including hunt groups) ordered on the same LSR will be provisioned together.

E. The Batch Status Tool will provide CLEC with the current status of its BHC requests for any given central office on an individual line-by-line basis. The Batch Status Tool will return a display that will list status changes on BHC orders occurring for that day. The display will provide the affected telephone numbers, order numbers, related order numbers, CFA, and PON number associated with the BHC requested. Subsequent changes to the status of any order will be noted in the Batch Status Tool.

The Batch Status Tool will provide, on the day of the cut, the start time and the completion time on a line-by-line basis. If CLEC is interested in capturing the exact moment the conversion work is completed, CLEC's current switch should have the capability to capture ("trap") the conversion and issue and request to have the subscription submitted for number porting.

1. Currently, Qwest's BHC Status Tool and amendments to Appointment Scheduler to account for the BHC process are scheduled for deployment on October 18, 2004. Such tools will not be available before that date. The BHC process will not be available as a provisioning option until these tools are deployed.
2. If there is a delay in deployment of these tools, CLEC will be notified using the existing Change Management processes.
3. Once deployed, CLEC must use the Batch Status Tool and Appointment Scheduler to utilize the BHC process.
4. The Batch Hot Cut process defined here will not be in effect until the Batch Status Tool and Appointment Scheduler are developed, tested, and deployed.
5. The IDLC modified batch process will be excluded from the batch scheduling tool until the time when systems modifications and enhancements, in a future IMA release, are in place. However, IDLC conversions will be handled on an exception basis using the manual methods until the time when these modifications and enhancements are in place.

EXHIBIT 1:

**STATE COMMISSION ORDERS, AND ARIZONA STAFF COMMENTS,
REGARDING QPP**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-366T

RE: THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U S WEST COMMUNICATIONS, INC. AND MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC.

**ORDER APPROVING
INTERCONNECTION AGREEMENT**

Mailed Date: November 16, 2004
Adopted Date: October 27, 2004

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I. BY THE COMMISSION**A. Background**

1. This matter comes before the Commission for consideration of the motion of MCImetro Access Transmission Services, L.L.C. (MCImetro) for approval of an Amendment to its Interconnection Agreement with Qwest Corporation, formerly known as U S WEST Communications, Inc. (Qwest).

2. MCImetro filed this motion on July 23, 2004 pursuant to 4 *Code of Colorado Regulations* (CCR) 723-44-4. In its motion, MCImetro seeks Commission approval of a negotiated amendment between Qwest and MCImetro for elimination of unbundled network element platform (UNE-P) and implementation of batch hot cut process and discounts, as well as approval of the QPP Master Service Agreement between Qwest and MCImetro.

3. Qwest filed an entry of appearance and notice of intervention on August 2, 2004. On August 3, 2004, Qwest filed a motion to dismiss the application, and on August 4, 2004, filed an errata to the motion to dismiss. Qwest's motion to dismiss applies only to the request for approval of the QPP Master Services Agreement, and not the request for approval of the agreement for elimination of UNE-P and implementation of batch hot cut process and discounts. MCImetro filed its reply to the motion to dismiss on August 17, 2004. On August 31, 2004, Qwest submitted a motion for leave to file a reply in support of its motion to dismiss, along with a proposed reply. Both Qwest and MCImetro support passage of the elimination UNE-P and implementation of a batch hot cut process and discounts amendment.

4. On August 9, 2004, AT&T Communications of the Mountain States, Inc. and TCG Colorado (collectively AT&T) filed an entry of appearance and notice of intervention as a matter of right, or in the alternative, a request for permissive intervention under Rule 4 CCR 723-

1-64. AT&T takes no position on whether the Qwest/MCImetro agreements should be approved; its argument addresses only whether the QPP Agreement must be filed with this Commission.

5. In Decision No. C04-1062, issued September 7, 2004, we granted AT&T's request for intervention, granted Qwest's motion for leave to reply, asked that additional briefs be filed by September 17, 2004, and asked the parties to appear for oral argument on September 28, 2004. Oral argument was held as scheduled, and Qwest was granted additional time to file a limited supplemental brief which was filed on October 6, 2004. Briefs filed by the parties also address whether Federal Communications Commission Order No. 04-179 affects the dispute in this matter which is whether Federal and Colorado law require that the Qwest Master Services agreement for Qwest Platform Plus service (the Agreement) be filed with this Commission for approval or rejection.

B. Discussion

1. Jurisdiction of the Commission

6. At the outset, the parties differ on whether the Commission has jurisdiction to approve or reject the QPP Agreement. Qwest asserts that because the Agreement was negotiated not with respect to § 251 of the Communications Act of 1996 (the Act), but rather was negotiated with respect to § 271 of the Act, the Commission lacks jurisdiction to review the Agreement. We disagree.

7. As demonstrated by both AT&T and MCImetro, the Federal Communications Commission (FCC) made clear in Order No. FCC 02-276, *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89 (October 4, 2002) (Declaratory Order), that state

commissions are in a position to determine what constitutes an interconnection agreement that needs to be filed. The FCC stated, “[b]ased on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an ‘interconnection agreement’ and, if so whether it should be approved or rejected.” *Id.* at ¶10. Qwest argues that only the FCC sets the standard with respect to what agreements need be filed, but the Declaratory Order explicitly rejects this proposition. “Therefore, we decline to establish an exhaustive, all encompassing ‘interconnection agreement’ standard.... We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for approval.” *Id.* To be sure, the FCC sets forth principles that states should follow in determining what needs to be filed pursuant to § 252(a)(1). However, the FCC clearly expects that State Commissions will determine what agreements need to be filed and whether they should be approved. We thus have the jurisdiction to consider whether the QPP Agreement needs to be filed as an interconnection agreement, and to approve or reject it.

2. Federal Law

Section 252(a)(1)

Section 47 U.S.C. 252(a) (1) (of the Telecommunications Act of 1996), provides:

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

This statute provides authorization for parties, when a request is made pursuant to § 251, to negotiate an agreement without regards to the standards set forth in § 251 subsections (b) and (c). It then explicitly requires filing of those agreements with state commissions.

8. In its Declaratory Order, the FCC provided: “we find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed *pursuant to section 252(a)(1)*.” (emphasis added) *Id.* at ¶8. Qwest, citing footnote 26 of the FCC order which provides that only those agreements that contain an ongoing obligation relating to §§ 251(b) or (c) must be filed under § 252(a)(1), interprets this to mean that Qwest has no obligation to file the Commercial Agreement, and the Commission has no authority to review and approve it. Qwest’s basis for this assertion is that the QPP Agreement relates only to obligations required by § 271 of the Act.

9. We agree that the FCC has clearly stated only those agreements containing “an ongoing obligation *relating* to section 251(b) or (c) must be filed *under 252(a)(1)* (emphasis added).” *Id.* fn 26. We are not prepared to say, however, that the QPP Agreement on mass market switching and shared transport is unrelated to §§ 251(b) or (c). Section 251(c) sets forth obligations of incumbent local exchange carriers which include interconnection. Certainly, mass market switching and shared transport are related to interconnection, and so is the QPP Agreement. It thus must be filed pursuant to § 252(a)(1). Even if we were to read the Declaratory Order as supporting Qwest’s position, it elaborates only upon what must be filed under § 252(a)(1), but says nothing about the requirements of § 252(e)(1).

Section 252(e)(1)

Section 47 U.S.C. 252(e)(1) provides:

(e) **Approval by State commission**

(1) **Approval required**

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

10. Qwest argues that, in its Declaratory Order, the FCC determined that the Act contemplates the filing of agreements with ongoing obligations *relating* to subsections (b) and (c) of § 251. Qwest states that there is no independent filing obligation under § 252(e)(1). Qwest believes that the FCC determination addresses the requirements of § 252(e)(1) of the Act. Specifically, Qwest argues that the Declaratory Order states that § 252(e)(1) requires the filing only of agreements relating to §§ 251(b) and (c). *Qwest Motion to Dismiss* at 5. Qwest ignores, however, that the Declaratory Order only refers to filing requirements pursuant to § 252(a)(1). In reality, nowhere does the Declaratory Order speak to the filing requirements of § 252(e)(1). We believe that the plain language of § 252(e)(1) requires all interconnection agreements to be filed with the Commission:

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.

11. In interpreting statutes, courts look to the plain meaning of the statutory language, and the language and design of the statute as a whole. *U.S. v. Williams*, 376 F.3d 1048, 1052 (10th Cir. 2004). ‘Any’ means but one thing:

Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts. *United States v. Gonzales*, 520 U.S. 1, 5, 117 S.Ct. 1032, 1035, 137 L.Ed.2d 132 (1997).

“[E]arlier this year, the Supreme Court explained, "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.' " United States v. Gonzales, 520 U.S. 1, ----, 117 S.Ct. 1032, 1035, 137 L.Ed.2d 132 (1997) (citation omitted). Here, as in *Gonzales*, "Congress did not add any language limiting the breadth of that word," so "any" means all. *See id. Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1186 (11th Cir. 1997).

Here, as in the cases cited above, Congress did not add any limiting language in § 252(e)(1), so we must assume that all negotiated and arbitrated interconnection agreements must be filed with the Commission.

12. We evaluate and harmonize § 252(a)(1) and § 252(e)(1) as follows. The former concerns a limited set of interconnection agreements. It provides authority to negotiate agreements independent of the government requirements set forth in §§ 251(b) and (c). At the same time, the subsection reminds parties that, although independently negotiated, the parties still must submit the agreement to the states for approval. Subsection 252(a)(1) is as much about allowing companies to negotiate agreements without government restraint as it is about filing requirements. Even without subsection 252(a)(1), parties would be required to file these interconnection agreements under § 252(e)(1). This subsection requires the filing of all interconnection agreements. Without § 252(e)(1), parties to agreements requested and negotiated pursuant to the standards in subsections 251(b) and (c) would not be required to file their agreements.

3. Section 271

13. Section 47 U.S.C. § 271 requires that Regional Bell Operating Companies (RBOCs) unbundle certain network elements, albeit not at Total Element Long-Run Incremental Cost rates. As Qwest states in its brief, “[m]any of the elements which have been removed from the list of unbundled elements must still be unbundled pursuant to Section 271(c)(2)(B) of the 1996 Act.” *Qwest Motion to Dismiss*, p. 7. The elements covered by the QPP Agreement are

unbundled pursuant to § 271(c). Congress intended that state commissions play a role in monitoring RBOC compliance with § 271(c) requirements. Indeed, § 271(d)(2)(B) provides:

(B) Consultation with State commissions

Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) of this section.

14. Congress clearly intended State Commissions to guide the FCC with respect to RBOC compliance with unbundling requirements in § 271(c). We cannot do this if interconnection agreements negotiated pursuant to § 271 are not filed with this Commission.

15. We do not accept Qwest's interpretation of the Declaratory Order. We believe that the FCC set forth guidelines as to what constitutes an interconnection agreement, and intends that state commissions apply those guidelines in determining what agreements need to be filed for approval. We believe the QPP Agreement is an "interconnection agreement." As argued by MCImetro, the agreement, which relates to mass market switching and shared transport, is an agreement for "network elements," even if they are provided under § 271 of the Act. The QPP Agreement meets the criteria set forth in the FCC Declaratory Order criteria for evaluating what is an interconnection agreement. It sets forth ongoing obligations that relate to interconnection and unbundled network elements. As an interconnection agreement, it must be filed under § 252(e)(1). Indeed, we believe that all agreements which set forth ongoing obligations which relate to interconnection and unbundled network elements must be filed with this Commission pursuant to § 252(e)(1).

4. State Law

16. We also find MCImetro and AT&T's state law arguments persuasive. Qwest provides no court decision, statute, or rule that invalidates this Commission's rules concerning

the filing of interconnection agreements. Qwest only asserts that because the agreement was for unbundling pursuant to § 271 as opposed to § 251, it is subject to federal jurisdiction and thus not state jurisdiction. Commission Rule 4 CCR 723-44-2.5 defines "interconnection agreement" as

[A]n agreement for interconnection, services, or network elements entered into between or among LECs or Telecommunications Carriers for the purpose of transmission of information by electronic, optical or any other means between separate points by prearranged means."

The state language is broad, and makes no distinction between §§ 251 and 271 of the Act. The QPP Agreement fits under this language, and pursuant to 4 CCR 723-44.4.1 it must be filed with the Commission. Indeed, whether negotiated or arbitrated pursuant to § 251, or § 271 of the Act, whether a "commercial agreement" or otherwise, any agreement between carriers that provides interconnection, services, or network elements for the purpose of transmission of information between separate points must be filed with the Commission pursuant to Colorado law.

5. Federal Communications Commission Order No. 04-179

17. We asked the parties to address whether FCC Order No. 04-179, WC Docket No. 04-3134 (August 20, 2004), which in effect stays the U.S. Court of Appeals for the District of Columbia's decision on the FCC's Triennial Review Order for six months, affects how this Commission should rule. We do not believe that the FCC order affects filing requirements.

18. Qwest asserts that the FCC's order that competitive local exchange carriers may not opt into agreements for switching, enterprise market loops and dedicated transport is evidence for its position on filing. We do not read the FCC's order on opt in provisions to address filing. Rather, we believe as argued by MCImetro, that the FCC has not addressed filing requirements for "commercial agreements." Indeed, Commissioner Abernathy's concurring statement ruing the lack of clarification of filing requirements reinforces this position.

19. We thus require that Qwest file QPP Master Service Agreements with the Commission for approval or disapproval. We also approve the motion as filed, including the elimination of UNE-P and implementation of a batch-hot cut process and the QPP Master Service Agreement.

20. Under the terms of 47 U.S.C. § 252(i) of the Act, MCImetro may at some future date opt into the terms and conditions of Commission approved and currently effective agreements:

[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 251 *et seq.* of the Act requires that the Commission review and approve or reject interconnection agreements involving incumbent local exchange carriers like Qwest. To comply with the Act, rates in negotiated agreements must be just and reasonable, nondiscriminatory and based on the cost of providing the interconnection or network element. 47 U.S.C. § 252(e). In reviewing agreements (or portions thereof) the Commission generally is guided by 47 U.S.C. § 252(e)(2), requiring that interconnection agreements not discriminate against non-parties and be consistent with the public interest, convenience and necessity.

21. The Commission has not previously approved all of the amended rates and conditions proposed here. However, we find it consistent with the directives of the Act and our own interconnection agreement rules to approve the present amended terms and conditions subject to our own rules and general ratemaking proceedings.

II. ORDER

A. The Commission Orders That:

1. The Qwest Corporation Platform Plus Master Service Agreement must be filed as an interconnection agreement for approval by the Commission.

2. MCImetro Access Transmission Services, L.L.C.'s motion for approval is granted in its entirety, consistent with the discussion above.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 27, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
SPECIALLY CONCURRING.

III. CHAIRMAN GREGORY E. SOPKIN SPECIALLY CONCURRING:

1. I concur with the result of today's decision – that the Interconnection Agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation must be filed with the Commission. However, I do not subscribe to the entirety of the reasoning in the decision, so I write separately.

2. In my view, filing of the Agreement is mandated for two reasons. First, 47 U.S.C. § 252 is broadly written to include not only unbundled network elements, but also interconnection (which would include mass market switching and shared transport), and the Federal Communications Commission (FCC) has broadly interpreted this statute. Indeed, as pointed out by AT&T Communications of the Mountain States, Inc. in its brief, the FCC has deemed only four narrow categories of interconnection agreements (none applicable here) for which there is *no* state filing requirement.

3. Second, as pointed out in the Commission's decision *supra*, the FCC has given states broad deference in deciding which interconnection agreements must be filed. The only state guidance we have is twofold: (1) a provisional definition in Decision No. C02-1183 (Docket No. 96A-287T *et al*):

An interconnection agreement, for purposes of Section 252(e)(1) of the Telecommunications Act of 1996, is a binding contractual agreement or amendment thereto, without regard to form, whether negotiated or arbitrated, between an Incumbent Local Exchange Carrier and a telecommunications carrier or carriers that includes provisions concerning ongoing obligations pertaining to rates, terms, and/or conditions for interconnection, network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, or collocation.¹

¹ Decision No. 02-1183 at ¶ 5, p.6.

and (2) a Commission rule (4 CCR 723-44-2.5, cited *supra*) that also broadly defines “interconnection agreement.” While the provisional definition was not meant to apply to later cases, it appears consistent with the FCC’s treatment of the issue.

4. Today’s decision is legal. From a policy standpoint, privately negotiated commercial contracts lose much value (to both parties) when they must be made public. While the FCC’s adoption of the “all or nothing” opt-in rule mitigates this concern, it is not eliminated. In my view, the FCC should clarify when interconnection agreements must be filed with state commissions because of public policy and legal requirements, and when not. Until then, there is considerable uncertainty.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Chairman

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION, AND MCIMETRO ACCESS TRANSMISSION SERVICES, LLC</p>	<p>DOCKET NO. NIA-99-35</p>
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ORDER DENYING MOTION FOR REHEARING

(Issued December 15, 2004)

On August 2, 2004, MCI metro Access Transmission Services, LLC (MCI), filed an application with the Utilities Board (Board) requesting the Board approve an amendment to a negotiated interconnection agreement between MCI and Qwest Corporation, f/k/a U S West Communications, Inc. (Qwest), and a Qwest Platform Plus™ (QPP) Master Services Agreement between the two companies. The amendment filed by MCI was identical to an amendment filed for Board approval on July 27, 2004, by Qwest. Pursuant to 199 IAC 38.7(4)"b," notice of the amendment and Master Services Agreement was published on the Board's Web site, providing for any comments or objections to be filed by September 1, 2004. No objections or comments were filed concerning the amendment and it was approved under the provisions of 199 IAC 38.7(4)"d" on September 6, 2004.

On August 16, 2004, Qwest filed a motion to dismiss the application for approval of the Master Services Agreement, contending that the agreement was not an interconnection agreement subject to Board review. Qwest argued that the

Master Services Agreement does not fall within Section 252 of the Federal Telecommunications Act¹ and is therefore not subject to Board review or approval.

After reviewing filed comments, responses to Qwest's motion to dismiss, and briefs on the legal issues, the Board denied Qwest's motion to dismiss the application for review.² The Board stated:

The Board finds that the agreement between Qwest and MCI is subject to the filing requirements of 47 U.S.C. § 252(a)(1). Regardless of Qwest's obligations under the TRO and USTA II, the agreement between Qwest and MCI is a public contract that pertains to the obligations of 47 U.S.C. § 251. The agreement sets forth a description of services and elements to be offered; it contains performance measurements and obligations; and it contains rate structures and elements. Thus, § 252(a)(1) requires the agreement be filed with the Board for review and approval.³

On November 18, 2004, Qwest filed its application for rehearing, arguing the Board determined the correct standard for determining whether an agreement between carriers should be filed pursuant to Section 252, but applied the standard incorrectly. Qwest argues that the Board failed to determine that the services involved in the Master Services Agreement are subject to 47 U.S.C. § 251(b) or (c) before applying the standard to determine whether the agreement should be filed pursuant to Section 252.

¹ 47 U.S.C. § 252.

² See, "Order Denying Motion to Dismiss Application for Review of Negotiated Commercial Agreement and Approving Interconnection Agreement," Docket No. NIA 99-35, issued October 29, 2004.

³ *Id.* at 6-7.

On December 2, 2004, MCI filed an objection to the application for rehearing reiterating its arguments made in previous filings and noting that in every state where Qwest's motion to dismiss has been acted upon, the motion has been denied. Those states include Colorado, Minnesota, New Mexico, Oregon, South Dakota, Washington, and Wyoming.

Whether an agreement must be filed under § 252 depends on whether the agreement is related to any of the obligations an ILEC has under § 251(b) and (c) to make its network available to competitors. The controlling factor is whether the agreement pertains to the obligations contained in § 251(b) or (c). Although Qwest has tried to separate the Master Services Agreement from the amendment to the previously-approved interconnection agreement between the two companies, it is apparent from a review that the two seemingly separate contracts are very much interrelated and each depends upon both agreements being in effect.

The Master Services Agreement provides, at paragraph 23:

In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement.

Paragraph 2.2 of the Batch Hot Cut Amendment provides, in part:

If the QPP MSA is terminated (for reasons other than material breach by MCI) with respect to a particular state, this Amendment, by its own terms and notwithstanding any requirement that subsequent modifications or amendments be in writing signed by both Parties, automatically be terminated in that state, and MCI shall be free thereafter to

pursue any available means to purchase UNE-P or equivalent services from Qwest.

In other words, if a state commission rejects the Master Services Agreement, the Batch Hot Cut Amendment is invalidated as well. Therefore, the amendment and the Master Services Agreement are inexorably intertwined.

In *Sage v. P.U.C. of Texas*, the court considered a similar argument by Southwestern Bell Telephone Company and stated:

If the parties were permitted to file for approval on only those portions of the integrated agreement that they deem relevant to § 251 obligations, the disclosed terms of the filed sub-agreements might fundamentally misrepresent the negotiated understanding of what the parties agreed.⁴

The Court also noted:

Without access to all terms and conditions, the PUC could make no adequate determination of whether the provisions fulfilling § 251 duties are discriminatory or otherwise not in the public interest. For example, while the state terms of publicly filed sub-agreement might make it appear that a CLEC is getting a merely average deal from an ILEC, an undisclosed balloon payment to the CLEC might make the deal substantially superior to the deals made available to other CLECs. Lacking knowledge of the balloon payment, neither the State commission nor the other CLECs would have any hope of taking enforcement action to prevent such discrimination.⁵

The Board finds that because the Master Services Agreement is an integral part of the overall agreement, it was subject to the Board's jurisdiction and review pursuant to 47 U.S.C. 252(e).

⁴ *Sage Telecom, LP v. Public Util. Comm'n of Texas*, Case No. A-04-CA-364-SS, at 11-12 (W.D. Tex. Oct. 7, 2004).

⁵ *Id.*

IT IS THEREFORE ORDERED:

"Qwest's Application for Rehearing or Order Denying Motion to Dismiss Application for Review of Negotiated Commercial Agreement" filed on November 18, 2004, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 15th day of December, 2004.

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION, AND MCIMETRO ACCESS TRANSMISSION SERVICES, LLC</p>	<p>DOCKET NO. NIA-99-35</p>
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**ORDER DENYING MOTION TO DISMISS APPLICATION FOR REVIEW OF
NEGOTIATED COMMERCIAL AGREEMENT AND APPROVING
INTERCONNECTION AGREEMENT**

(Issued October 29, 2004)

On August 2, 2004, MCImetro Access Transmission Services, LLC (MCI), filed an application with the Utilities Board (Board) requesting the Board approve an amendment to a negotiated interconnection agreement between MCI and Qwest Corporation, f/k/a U S West Communications, Inc. (Qwest), and a Qwest Platform Plus™ (QPP) Master Services Agreement between the two companies. The amendment would eliminate the unbundled network element platform (UNE-P) and would implement a batch hot cut process and discounts. The amendment is to an interconnection agreement between the two companies previously approved by the Board in Docket No. NIA-99-35.

The amendment filed by MCI is identical to an amendment filed for Board approval on July 27, 2004, by Qwest. No objections or comments were filed concerning the amendment and it was approved under the provisions of 199 IAC 38.7(4)"d" on September 6, 2004. Since the amendment has been

approved, it will not be addressed further, but instead was included here for informational purposes.

Pursuant to 199 IAC 38.7(4)"b," notice of the amendment and Master Services Agreement was published on the Board's Web site, providing for any comments or objections to be filed by September 1, 2004.

On August 16, 2004, Qwest filed a motion to dismiss the application, contending that the Master Services Agreement is not an interconnection agreement subject to Board review. Qwest argues that the Master Services Agreement does not fall within Section 252 of the Federal Telecommunications Act¹ and is therefore not subject to Board review or approval.

On August 26, 2004, AT&T Communications of the Midwest, Inc., and TCG Omaha, Inc. (collectively AT&T), filed comments related to the MCI application for approval. AT&T indicated that it does not oppose the two agreements, but disagrees with Qwest that the Master Services Agreement is not subject to Board review and approval.

On August 30, 2004, MCI filed a response to Qwest's motion to dismiss, noting that the services covered by the Master Services Agreement consist primarily of local switching and shared transport network elements in combination with certain other services. MCI argues that because the agreement creates an ongoing obligation pertaining to the manner in which Qwest will provide unbundled network elements, the parties have an obligation to file the agreement with the state

¹ 47 U.S.C. § 252.

commission so that the state can determine whether the agreement discriminates against a telecommunications carrier not a party to the agreement and whether approval is consistent with the public interest, convenience, and necessity as described in 47 U.S.C. § 252(e)(2)(A).

On August 31, 2004, AT&T filed a response to Qwest's motion to dismiss. AT&T argues that the Master Services Agreement is an interconnection agreement adopted by negotiation that must be filed with the Board pursuant to Section 252 of the Federal Telecommunications Act.

The Board docketed the Master Services Agreement pursuant to 199 IAC 38.7(4), which provides that the Board will issue an order docketing a negotiated interconnection agreement within 40 days of the date of filing of the agreement if there are objections or comments filed. Although it appeared that there were no objections or comments concerning the substance of the Master Services Agreement, the Board docketed the application and agreements filed by MCI on August 2, 2004, to consider the issue raised by Qwest regarding the necessity of filing the agreement.

Because there were no disputed issues of fact, a hearing was not initially set and no party filed a request for a hearing. The Board established a date for filing briefs addressing the issue of whether the Master Services Agreement is a negotiated interconnection agreement required to be filed pursuant to 47 U.S.C. § 252.

On September 23, 2004, AT&T filed a letter indicating that it would not be filing a brief, but that its response to Qwest's motion to dismiss (filed August 31, 2004) incorporated its legal arguments regarding why the Master Services Agreement should be considered an amendment to the existing interconnection agreement and the need for it to be filed with the Board for approval pursuant to the 1996 Telecommunications Act.

On September 24, 2004, Qwest and MCI filed briefs. Supplemental filings were made on October 4, 2004 by MCI and AT&T, and on October 12, 2004, by AT&T to bring to the Board's attention orders issued by other state commissions on this issue and to a decision of the U.S. District Court for the Western District of Texas in *Sage Telecom, LP v. Public Utility Commission of Texas*.

The Federal Communications Commission (FCC) has issued at least one ruling that is relevant to this matter. On April 23, 2002, Qwest filed a petition for a declaratory ruling with the FCC seeking a ruling on the scope of the mandatory filing requirement set forth in 47 U.S.C. § 252(a)(1) of the 1996 Telecommunications Act (Act).² In its petition to the FCC, Qwest argued that under § 252(a)(1), a negotiated agreement should be filed for state commission approval only if it includes (i) a description of the service or network element being offered; (ii) the various options available to the requesting carrier and any binding contractual commitments

² Qwest Communications International, Inc., *Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Declaratory Ruling released October 4, 2002 (Declaratory Ruling).

regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option.³

Qwest argued in its petition to the FCC that agreements regarding elements that have been removed from the national list of elements subject to mandatory unbundling should not be required to be filed under § 252(a)(1). The FCC declined to establish an exhaustive, all-encompassing "interconnection agreement standard" and encouraged state commissions to decide in the first instance which agreements fall within the statutory standard.⁴ However, the FCC found that agreements containing an ongoing obligation relating to Section 251(b) or (c) must be filed under Section 252(a)(1).⁵

The Master Services Agreement at issue in this docket contains a description of the service or element being offered (Service Exhibit 1, 1.1 General QPP™ Service Description); options available to the requesting carrier and performance quality commitments (Service Exhibit 1, 7.0 Performance Measures and Reporting, Performance Targets and Service Credits; also, Attachment A to Service Exhibit 1, Performance Targets for Qwest QPP Service); and rate structures and elements (Service Exhibit 1, 3.0 Rates and Charges). Thus, even based upon Qwest's argument in its FCC Petition, the Master Services Agreement meets the requirements for filing an agreement for approval by a State Commission.

³ Declaratory Ruling, ¶ 2.

⁴ Declaratory Ruling, ¶ 10-11.

⁵ Declaratory Ruling, fn. 26.

"Qwest argues that subsequent judicial decisions make it unnecessary to file this agreement." On August 21, 2003, the FCC issued its Triennial Review Order (TRO) pursuant to its statutory authority set forth at 47 U.S.C. § 251(d).⁶ On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued its decision on the appeals taken from the TRO (the USTA II decision).⁷ As a result of the D.C. Circuit's decision in USTA II, Qwest is no longer required to provide certain network elements under Sections 251 or 252 of the Act. According to Qwest, the Qwest Platform PlusTM services are now offered under Section 271 of the Act and consist primarily of the local switching and shared transport network elements in combination with certain other services. Qwest claims that because the agreement does not create any terms or conditions for services that Qwest must provide under Sections 251(b) and (c), it is not an interconnection agreement or an amendment to the existing interconnection agreement between Qwest and MCI and does not have to be filed with the Board.

The Board finds that the agreement between Qwest and MCI is subject to the filing requirements of 47 U.S.C. § 252(a)(1). Regardless of Qwest's obligations under the TRO and USTA II, the agreement between Qwest and MCI is a public contract that pertains to the obligations of 47 U.S.C. § 251. The agreement sets forth a description of services and elements to be offered; it contains performance

⁶ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (TRO).

⁷ *United State Telephone Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

measurements and obligations; and it contains rate structures and elements. Thus, § 252(a)(1) requires the agreement be filed with the Board for review and approval.

Qwest has argued that the FCC's Declaratory Ruling sets out unequivocally that only agreements that contain an ongoing obligation relating to § 251(b) or (c) must be filed under § 252(a)(1). However, the FCC also stated in its Declaratory Ruling that

...we believe that the state commissions should be responsible for applying in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements.⁸

The FCC declined to establish an exhaustive, all-encompassing interconnection agreement standard, leaving it to the state commissions to decide in the first instance whether a specific agreement should be filed under § 252.⁹ The Board has considered positions of the parties to this docket and finds the agreement is required to be filed.

On March 12, 2004, the FCC issued a Notice of Apparent Liability for Forfeiture (NAL) against Qwest, in which the FCC fined Qwest for its failure to file certain interconnection agreements with state commissions as required by 47 U.S.C. § 252. In the NAL, the FCC interpreted its Declaratory Ruling of 2002 and reiterated that "on its face, § 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions."¹⁰ In the NAL, the FCC stated that while

⁸ Declaratory Ruling, ¶ 7.

⁹ Declaratory Ruling, ¶ 10.

¹⁰ NAL ¶ 11, citing Declaratory Ruling ¶ 8.

§ 252(a)(1) is explicit in its filing requirements, the declaratory ruling provided certainty to those requirements by stating that any agreement creating an ongoing obligation and pertaining to the requirements of § 251 is an interconnection agreement that must be filed with the state commissions.¹¹

The FCC stated that interconnection agreements must be filed with the state commissions so that Qwest's competitors are able to opt into these agreements. The FCC also concluded that § 252(a)(1) is not just a filing requirement but the first and strongest protection under the Act against discrimination by the incumbent local exchange carriers (ILEC) against its competitors.¹²

Whether an agreement must be filed under § 252 depends on whether the agreement is related to any of the obligations an ILEC has under § 251(b) and (c) to make its network available to competitors. The controlling factor is whether the agreement pertains to the obligations contained in § 251(b) or (c). The agreement between Qwest and MCI clearly pertains to the obligations Qwest has to open its network to its competitors under § 251 and, as a result, the agreement is a public agreement subject to the filing requirements of § 252. The dispositive issue is whether the agreement relates to Qwest's obligations under § 251, and the answer to that question is yes, so the agreement must be filed under § 252.

Pursuant to 47 U.S.C. § 252(e)(2)(A), the Board may reject a negotiated interconnection agreement or amendment if it finds either (1) the agreement or

¹¹ NAL, ¶ 22.

¹² NAL, ¶¶ 31, 46.

amendment discriminates against a telecommunications carrier not a party to the agreement or (2) the implementation of the agreement or amendment is not consistent with the public interest, convenience, and necessity. As previously noted, no party filed any objections to the substance of the Qwest Platform Plus™ Master Services Agreement. Based upon the record made in this docket, the filed amendment does not discriminate against any other telecommunications carrier and is not inconsistent with the public interest and will be approved.

IT IS THEREFORE ORDERED:

1. The "Motion to Dismiss Application for Review of Negotiated Commercial Agreement" filed by Qwest Corporation on August 16, 2004, is denied.
2. The Qwest Platform Plus™ Master Services Agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC, is approved to be effective upon the issuance of this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of October, 2004.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest Corporation and
MCImetro Access Transmission Services
Amendment to Interconnection Agreement

ISSUE DATE: December 2, 2004

DOCKET NO. P-5321, 421/CI-04-1178

ORDER APPROVING AMENDMENT,
DENYING MOTION TO DISMISS AND
REJECTING MASTER SERVICE
AGREEMENT

PROCEDURAL HISTORY

On August 2, 2004, MCImetro Access Transmission Services, LLC (MCImetro) filed an amendment to its existing interconnection agreement (Amendment) and also a Master Service Agreement (MS Agreement) between MCImetro and Qwest. MCImetro submitted both the Amendment and the Master Service Agreement for Commission review and approval.

On August 12, 2004, the Minnesota Department of Commerce (the Department) filed comments recommending approval of the Amendment between MCImetro and Qwest. The Department did not make a recommendation on the MS Agreement.

On August 12, 2004, Qwest filed a motion to dismiss MCImetro's application for review and approval of the MS Agreement. Qwest disagreed with MCImetro that Section 252 of the Act required or authorized the Commission to review and approve the MS Agreement.

On September 14, 2004, the Commission issued a Notice for Comments Regarding Qwest's Motion to Dismiss.

On September 24, 2004, AT&T requested an extension of time to file its comments.

On September 24, 2004, MCImetro and the Department filed their comments.

On September 28, 2004, AT&T filed its comments.¹

On September 30, 2004, Department filed supplemental comments clarifying its September 24, 2004 comments.

On October 1, 2004, MCImetro filed reply comments.

The Commission met on October 21, 2004 to consider this matter.

FINDINGS AND CONCLUSIONS

I. MCImetro s Requests for Approval

In its August 2, 2004 filing, MCImetro requested that the Commission review and approve two documents that MCImetro had executed with Qwest on July 16, 2004: 1) an amendment to MCImetro s interconnection agreement (ICA) with Qwest and 2) a Master Service Agreement.

A. Amendment to the ICA

The term of the Amendment begins on July 16, 2004 and terminates July 31, 2008. The Amendment relates to the offering of unbundled mass market switching or unbundled enterprise switching and unbundled shared transport in combination with other network elements as part of the unbundled network element platform and Batch Hot Cuts. Pursuant to the Amendment, as soon as Qwest deployed its Batch Hot Cut System Tool and amended its Appointment Scheduler to accommodate Batch Hot Cut orders, Qwest would provide Batch Hot Cuts to MCImetro upon established rates, terms, and conditions.

B. Master Service Agreement

MCImetro stated that the parties entered into an MS Agreement to address the uncertainty created by the DC Circuit Court s March 2, 2004 decision² and to create a stable arrangement for the continued availability to MCImetro from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements. The service Qwest agreed to furnish, which continues the June 14, 2004 UNE-P functionality, is known as Qwest Platform PlusTM (QPPTM).

¹ AT&T, MCImetro and the Department all filed comments after the deadline in the Commission s Notice for Comment. AT&T requested an extension to file its comments late, the Department supplemented its earlier comments filed on time, and MCImetro replied to the Department s supplemental comments and commented on a recent Utah decision on a similar motion filed by Qwest in Utah. It does not appear that any party has been prejudiced by the late filing of comments.

² *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), referred to hereafter as USTA II.

II. Parties Comments Regarding the Proposed Amendment to the ICA

No party contended that the proposed amendment to the ICA was not properly before the Commission for review and approval.

MCImetro and Qwest stated that the Amendment is consistent with prior Commission precedent and recommended that it be approved. AT&T did not comment on this issue. The Department also recommended approval.³

III. Commission Analysis and Action Regarding the Proposed Amendment to the ICA

The Amendment essentially makes three changes to the ICA. First, the Amendment adds hot cut terms and conditions to the ICA arrangements. Second, the Amendment provides that Qwest will not offer and MCImetro will not order unbundled mass market and enterprise switching and unbundled shared transport in combination with other network elements as part of UNE-P. Third, the Amendment makes line-splitting available for loops provided under the ICA.

The Amendment also states that MCImetro agrees that it will waive any rights under applicable law in connection with obligations governed by sections 251 and 252. The Amendment allows either party to immediately, upon written notice to the other party, terminate the Amendment and MS Agreement if the FCC, state commission or any governmental agency rejects or modifies any material provision of the Amendment.

No party contended that it was not properly before the Commission for review and approval and no party recommended against Commission approval of the Amendment.

Under the Act, state commissions are to approve or reject such negotiated agreements, making written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Negotiated agreements may be rejected for the following reasons: (1) they discriminate against a telecommunications carrier who is not a party to the agreement; (2) implementing them would be inconsistent with the public interest, convenience, and necessity; (3) they conflict with any valid state law, including any applicable intrastate service quality standards or requirements. 47 U.S.C. § 252(e)(2) and (3).

The Commission finds that the terms of the Amendment do not violate any of the three standards set forth in 47 U.S.C. § 252(e)(2) and (3). First, they do not discriminate against a telecommunications carrier who is not a party to the agreement. Second, implementing them would be not be inconsistent with the public interest, convenience, and necessity. And third, they do not conflict with any valid state law, including any applicable intrastate service quality standards or requirements. The Commission will therefore approve the Amendment.

³ In subsequent comments filed on October 1, 2004, the Department raised a concern regarding the failure to include Commission approved language regarding six subjects: disconnections, default, assignment, amendment, dispute resolution, and third party beneficiaries). The Department has clarified that this concern applied not to the amendment to the interconnection agreement but to the Master Service Agreement.

IV. Qwest's Motion to Dismiss Petition Regarding Master Service Agreement

Qwest acknowledged that the amendment to its ICA with MCI Metro was subject to the Commission's review and approval pursuant to Section 252 of the Federal Telecommunications Act of 1996 (the Act), but contended that the MS Agreement was not subject to Sections 251 or 252 and, therefore not subject to Commission review and approval.

Qwest cited two authorities that it argued established that the MS Agreement is not subject to either section 251 or 252 and is therefore not subject to review and approval by the Commission.

- " First, Qwest cited the USTA II (March 2, 2004) decision.⁴ Qwest argued that the MS Agreement relates to network elements that USTA II makes clear are no longer required to be unbundled pursuant to Section 251 or 252 of the Act.
- " Second, Qwest cited the October 2002 FCC declaratory order (Declaratory Order) discussing the scope of the mandatory filing requirement set forth in section 252(a)(1).⁵

Qwest maintained that these two authorities read together definitively establish that the MS Agreement is not subject to either section 251 or 252 and is therefore not subject to review and approval by the Commission. Qwest stated that only agreements pertaining to the provision of services required under Section 251(b) and (c) of the Act constitute interconnection agreements that must be filed under Section 252. Qwest argued that since the MS Agreement did not pertain to the provision of an unbundled network element under Section 252(c) or to any other facility or service provided under Section 251(b) or (c), it is not within the Section 252 filing requirement.

In addition, Qwest asserted that the FCC has exclusive jurisdiction over this contract, a contract for non-251 network elements, for three reasons. First, Qwest argued that since in many cases the elements are required under federal law to be provided on an unbundled basis by Regional Bell Operating Companies (RBOCs) under Section 271(c)(2)(B) of the Act, the unbundling obligation and the jurisdiction to review the contracts for these elements is federal. Second, Qwest asserted that network elements remain subject to federal jurisdiction even after they have been removed from the list of Section 251(c)(3) elements. Third, Qwest argued that contracts between carriers for network elements that do not meet the necessary and impair tests fall within express federal filing jurisdiction.

⁴ See footnote 2.

⁵ Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, WC Docket No, 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) ¶ 1.

V. Comments Regarding Qwest s Motion to Dismiss MCImetro s Petition With Respect to the Master Service Agreement

A. The Department

The Department recommended that the Commission deny Qwest s motion. The Department noted that the services to be provided pursuant to the MS Agreement were switching and transport services. The Department stated that the FCC s Interim Triennial Review Order (Interim TRO)⁶, issued August 20, 2004, reestablished Qwest s obligation to provide switching and transport as section 251 unbundled network elements (UNEs). The Department reasoned that because these elements are 251 elements in accordance with the Interim TRO, the Commission is required to approve or reject the MS Agreement in accordance with section 252. The Department stated that by simply placing the switching and transport network elements into a commercial agreement, Qwest did not eliminate its 251/252 obligations for those elements or the Commission s authority to review and approve that agreement.

B. AT&T

AT&T recommended that the Commission deny Qwest s Motion and require Qwest to seek approval of its Master Service (MS) Agreement.

AT&T cited Section 252(e)(1):

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.⁷

AT&T noted that the FCC has declined to adopt a definitive interpretation of the term interconnection agreement as used in section 252(e). The Company noted that in the FCC s Declaratory Ruling, the FCC stated:

We decline to establish an exhaustive, all-encompassing interconnection agreement standard.⁸

AT&T argued that the FCC has determined that the scope of what must be filed is exceedingly broad and has left the determination of what must be filed up to the states to make on a case-by-case basis.⁹

⁶ *In the Matter of Unbundled Access Network Elements*, Order and Notice of Proposed Rulemaking, FCC 4-179 (August 20, 2004).

⁷ 47 U.S.C. § 252(e)(1).

⁸ *Qwest Communications International Inc. s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276 (rel. Oct. 4, 2002), ¶ 10.

⁹ *Id.*

AT&T stated that the FCC has provided guidance, however, defining the narrow scope of agreements that need not be filed. AT&T stated that the FCC has specified the agreements not required for filing as follows: those concerning dispute resolution, escalation provisions whose terms are not otherwise publicly available, settlement agreements that do not affect an incumbent LEC's ongoing obligations under section 251, forms used to obtain service, and certain agreements entered into during bankruptcy.¹⁰

AT&T asserted that Qwest made an improper distinction between agreements regarding provision of network elements required by the FCC rule (agreements which Qwest agrees must be reviewed and approved by the Commission) and agreements regarding the provision of other network elements (agreements which, according to Qwest, need not be reviewed and approved by the Commission). AT&T stated that the Act creates no such distinction. AT&T asserted that any request for network elements, even if the element is not required by FCC rule, triggers the incumbent local exchange carrier's (LEC's) duty under Section 251(c)(1) to negotiate in good faith in accordance with Section 252 and its duty under Section 251(c)(3) to provide such elements subject to good faith negotiations.

AT&T stated that whenever the incumbent LEC has agreed to provide network elements or their functional equivalent, the agreement must be filed with the state commission for approval. AT&T stated that Qwest's interpretation, that parties to an agreement to provide network elements could avoid Commission review for approval simply by adopting certain contract language (stating, for example, that the agreement was outside the purview of Sections 251 and 252) would render Section 252(e)(1) meaningless.¹¹

VI. Commission Analysis and Action Regarding Qwest's Motion to Dismiss

Having heard and considered the parties' written and oral comments, the Commission will deny Qwest's motion. The Commission does not agree with Qwest's assertion that the MS Agreement need not be submitted to the Commission for review and approval.¹²

Qwest has asserted that agreements regarding network elements required to be provided by the Act must be submitted to state commissions for their review but that agreements (such as the MS Agreement) that provide for other network elements may be formed and implemented without commission review and approval. The Commission does not find the distinction that Qwest asserts between agreements regarding network elements required to be provided and agreements to provide other network elements. All negotiated agreements for network elements must be filed with the Commission for approval.

¹⁰ Id. ¶¶ 9, 12-14.

¹¹ Section 252(e)(1) states: Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. 47 U.S.C. § 252(e)(1).

¹² The Department's argument that the FCC's Interim Triennial Review Order issued August 20, 2004 reestablished Qwest's obligation to provide switching and transport as section 251 UNEs leads to the same result.

Qwest's reliance on the FCC's Declaratory Order (October 4, 2002) to exempt the MS Agreement from Commission review and approval is misplaced. In that Order the FCC listed a number of types of agreements that must be filed pursuant to section 252(a)(1), including agreements that, like the MS Agreement, deal with interconnection, services, or network elements. In support of a contrary result, Qwest cites language in footnote 26 of the Declaratory Order but in doing so stretches it beyond its intended application. Rather than contradicting the language quoted from the Order's main text, the footnote language simply responds to the contentions made by the comments identified in the footnote. These comments had advocated that the Section 252(a)(1) filing requirement should be applied to every agreement between an incumbent LEC and another carrier, including settlement agreements that resolved past disputes. Understood in context, Footnote 26 does not attempt to reverse the above-cited language in the body of the Declaratory Order nor, of course, to contradict the unambiguous statutory language of Section 252(a)(1).

The second authority Qwest cited for its position was the U.S. Court of Appeals decision in *USTA II*. In this order, the Court of Appeals vacated the FCC's determinations identifying which network elements fell within the impairment analysis of Section 251(d) and the FCC's delegation to state commissions to make further, limited impairment determinations. As a result, Qwest stated, it was no longer obligated to provide unbundled access to local switching or shared transport pursuant to Section 251 and therefore not required to file for approval any agreements to provide those elements.

Qwest's argument is faulty because it rests on the false premise that only agreements to provide required network elements need be filed for approval. As noted above, the Act does not distinguish between agreements to provide mandatory network elements and agreements to provide other network elements. Congress's unambiguous statutory language is that voluntary negotiated agreements made . . . without regard to the standards set forth in subsections (b) or (c) of section 251 . . . shall be submitted to the State commission under subsection (e) of this section.¹³

The MS Agreement at issue in this case is a voluntary negotiated agreement for the provision of network elements: switching and transport. A plain reading of the Act, therefore, requires this negotiated agreement for network elements to be filed for approval with the Commission.

In addition to contravening the Act's plain language, Qwest's interpretation is at odds with the public policy promoted by the Act. In the Act, Congress has given state commissions particular responsibilities to assure nondiscriminatory interconnection arrangements between incumbent LECs and their competitors. One of the chief tools that Congress gave state commissions to fulfill that role is the authority to review and approve or reject interconnection agreements. And one of the ways Congress has sought to assure that state commissions will be in a position to exercise that authority is by directing that interconnection agreements be filed with State commissions for review and approval.

Qwest's interpretation that parties can avoid Commission review by putting formulaic language in their agreement would render Section 252(e)(1) meaningless and vitiate the state commission's statutory duty to determine whether any provisions of an interconnection agreement are discriminatory, inconsistent with the public interest, convenience, and necessity, or conflict with any valid state law. The Commission does not believe that the will of Congress can be circumvented by inventive contract wording. Calling a document a commercial agreement rather than an interconnection agreement and asserting in the contract that the agreement was negotiated outside the meaning of Section 252(a)(1) does not control.

¹³ 47 U.S.C. Section 252(a)(1).

The actual nature of the agreement, not its title, determines its regulatory treatment. Contract language purporting to deflect Commission review does not trump plain statutory bestowal of authority and clearly expressed Congressional intent that state commissions assess proposed interconnection agreements in light of the three standards articulated in Section 252(e)(1).

In short, then, since the document in question is an interconnection agreement, it must be submitted to the Commission for review and approval pursuant to Section 252(a)(1) and (e)(1).

The Commission notes that to date several other state commissions have considered and rejected the position that Qwest has argued in this matter, that the only agreements that must be filed for approval are agreements to provide network elements required to be provided under Section 251 (California¹⁴, Michigan¹⁵, Texas¹⁶, and Utah¹⁷) and none have adopted it.

Qwest has argued that all these state commission rulings are flawed because they fail to recognize that commission review and approval is only required for agreements to provide network elements pursuant to section 251(b) and (c) of the Act. As noted previously, however, there is no merit in Qwest's argument that the only interconnection agreements that must be reviewed and approved are those providing network elements that are required to be provided under Section 251(b) or (c). The plain language of 47 U.S.C. Section 252(a)(1) does not exempt any interconnection agreements from Commission review and approval.

¹⁴ The California Public Utilities Commission stated: In order for the Commission to perform this statutory duty [under Section 252(e)(2) of the Act], the interconnection agreement must be formally filed with the Commission and open to review by any interested party. Letter from Randolph L. Wu, State of California Public Utilities Commission, to SBC Communications, Inc. (April 21, 2004).

¹⁵ Order of the Michigan Public Service Commission, Case No. U-14121 (April 28, 2004). The Commission held that under the Act interconnection agreements arrived at through negotiations must be filed with and approved by [the state Commission].

¹⁶ Order of Public Utilities Commission of Texas (May 13, 2004). Citing the FCC's Qwest Declaratory Ruling, the Texas Commission held that the filing and review requirements are the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors.

¹⁷ Order of the Public Service Commission of Utah, Docket No. 04-2245-01 (September 30, 2004). In this docket before the Public Service Commission of Utah, MCI had filed with the Commission an amendment to an interconnection agreement and a Master Service Agreement for review and approval. As in the instant docket, Qwest filed a Motion to Dismiss raising the same arguments it has raised in this docket. The Public Service Commission of Utah issued an ORDER DENYING MOTION TO DISMISS, addressing and rejecting all Qwest's arguments.

VII. Evaluation of the Master Service (MS) Agreement

Because the Qwest/MCImetro MS Agreement is an interconnection agreement properly before the Commission for review and approval, the Commission will proceed in this section to evaluate that agreement.

A. Description of the MS Agreement

The MS Agreement provides MCImetro with Qwest services that allow MCImetro to provide both telecommunications and information services. Services include local switching and shared transport in combination to the extent available on UNE-P under an applicable interconnection agreement or Qwest's statement of generally available terms (SGAT). Also available for purchase are services under Qwest's Advanced Intelligent Network services, Qwest Digital Subscriber Line (DSL) services, and Qwest Voice Messaging Services. The rates for these services are in addition to the applicable rates for elements and services provided under the Qwest/MCImetro Interconnection Agreement (ICA). The term of the MS Agreement is from July 16, 2004 to July 31, 2008.

While MCImetro can no longer purchase UNE-P, for all intents and purposes the newly packaged service provided pursuant to the MS Agreement is the same except that the prices that MCImetro pays for network elements are now set under the MS Agreement.

B. The Department's Objection and Recommendation Regarding the Proposed MS Agreement

The Department stated that its review of the proposed MS Agreement showed that the agreement's language did not comply with the Commission's requirements for interconnection agreements on the following six issues:

- " Disconnections
- " Default
- " Assignment
- " Amendment
- " Dispute Resolution
- " Third Party Beneficiaries

The Department recommended that the Commission not approve the proposed MS Agreement unless it was amended to include the approved language previously approved by the Commission regarding these six issues.

C. AT&T's Position Regarding the Proposed MS Agreement

As noted previously, AT&T argued that the proposed MS Agreement must be reviewed by the Commission but did not take any position on whether the MS Agreement met the standards for approval.

D. Qwest and MCImetro Response to the Department's Recommendation

Qwest did not address the Department's recommendation that Commission-approved language on the six subjects must be added to the MS Agreement.

MCImetro did not object to the Department's recommendation. MCImetro stated that if the Commission concluded that certain additional provisions are required by Commission precedent to be included in the MS agreement, it should order the parties to include those provisions.

E. Commission Analysis and Action Regarding the MS Agreement

As found in the previous section regarding Qwest's Motion to Dismiss, the MS Agreement is properly before the Commission for review and approval.

Under the Act, state commissions are to approve or reject such negotiated agreements, making written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Negotiated agreements may be rejected for the following reasons: (1) they discriminate against a telecommunications carrier who is not a party to the agreement; (2) implementing them would be inconsistent with the public interest, convenience, and necessity; (3) they conflict with any valid state law, including any applicable intrastate service quality standards or requirements. 47 U.S.C. § 252(e)(2) and (3).

Based on the following analysis, the Commission finds that the terms of the MS Agreement do violate the second standards (public interest, convenience, and necessity) with respect to the six subject areas identified by the Department.

1. Disconnection - Section 8.3

Section 8.3 of the MS Agreement permits Qwest to terminate service to MCI if MCI fails to make payments due under the contract and requires MCI to notify its customers that service is being terminated. In previous dockets involving proposed interconnection agreements, the Commission has required interconnection agreements to make it clear that the incumbent cannot terminate service to the competitor without Commission approval and that the competitor must give its customers ten days notice that their service will be terminated.¹⁸ The public interest, convenience and necessity require that these terms be included in the contract at issue.

¹⁸ *In the Matter of the Joint Application of KMC Telecom, Inc. and US WEST Communications, Inc. for Approval of an Interconnection Agreement*, Docket No. P-5426, 421/M-97-850, ORDER REJECTING INTERCONNECTION AGREEMENT (August 13, 1997). See also: *In the Matter of the Application by Info-Tel Communications, Inc. for Approval of Agreement for Service Resale under the Federal Telecommunications Act of 1996, Section 252(e)*, Docket No. P-5298, 421/M-97-32, ORDER APPROVING CONTRACT (April 14, 1997); *In the Matter of the Petition of Choicetel, Inc. for Approval of an Interconnection Agreement for the Resale of U S WEST Communications, Inc.'s Service under the Telecommunications Act of 1996, Section 252(e)*, Docket No. P-5243, 421/M-97-171, ORDER APPROVING CONTRACT (May 14, 1997); *In the Matter of the Joint Application of OCI Communications of Minnesota, Inc. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement*, Docket No. P-5478, 421/M-97-522, ORDER REJECTING INTERCONNECTION AGREEMENT (July 22, 1997).

As the Commission has consistently noted, telephone service is essential to nearly all Minnesota households and businesses. Service interruptions are inconvenient at best and hazardous at worst. This Commission and all telecommunications providers have a responsibility to do everything possible to prevent sudden or unexpected interruptions of service. This means two things -- (1) carriers must not disconnect service to one another without good cause and Commission permission; and (2) customers whose carrier is being disconnected must receive enough notice to make an informed choice of another carrier and to complete service arrangements with that carrier.

The Commission believes the contract must make it clear that Qwest cannot terminate service to MCI without Commission permission. It has long been state policy to prohibit telecommunications providers from severing connections with, or discontinuing service to, another provider without Commission permission.¹⁹ This prohibition was originally intended to protect the integrity of the state's interexchange network. It is, if anything, more necessary with the advent of local exchange competition, when not just interexchange connections, but the local network itself, can be jeopardized by hasty or unjustified severing of connections.

Similarly, customer notification of impending disconnection is now more important than ever. In the past customers facing disconnection were typically dealing with payment issues; there was no issue as to which company would serve once those were resolved. In the competitive era, a customer, especially one with sophisticated communications needs, could be facing the need to do a significant amount of comparison shopping before selecting another carrier.

It is therefore important that the contract make it clear that MCImetro must give its customers notice, should Qwest terminate service and leave MCImetro unable to serve.

2. Default - Section 11

Section 11 of the MS Agreement, the default provisions of the MS Agreement, permits either party, upon default by the other party, to seek relief in accordance with the Dispute Resolution provision or any other remedy under this Agreement. Section 11 does not explicitly require notice to the Commission of any alleged default, however. The Commission believes that the public interest, convenience, and necessity require that either party notify the Commission at the same time that it notifies the other party of any alleged default.

Telephone service is essential to nearly all Minnesota households and businesses. Service disruptions are inconvenient at best and hazardous at worst. This Commission and all telecommunications providers have a responsibility to do everything possible to prevent sudden or unexpected interruptions of service. To meet this responsibility, the Commission needs the earliest possible notice of inter-carrier disputes, claims of default, and decisions to terminate interconnection agreements.

¹⁹ See Minn. Stat. § 237.12, subd. 2; *In the Matter of Three Petitions to Discontinue Service to Access Plus*, Docket Nos. P-999/CI-92-1061; P-421/EM-92-999; P-3006/M-92-1032; P-478/EM-92-1031.

The Commission will therefore reject the contract s default provisions²⁰, noting that the deficiencies discussed above could be cured by adopting the language approved in other negotiated interconnection agreements.²¹

3. Assignment - Section 16

Section 16 of the proposed MS Agreement permits either party to assign or transfer its rights and obligations thereunder, subject to specified conditions. In a consistent line of Orders regarding assignment provisions of interconnection agreements the Commission has required 60 days notice to the Commission of any proposed assignment or transfer.²²

The Commission continues to believe that it must receive prior notice of any proposed assignment or transfer. Telecommunications services are essential to the public safety and to the everyday operation of our society and economy. The Commission cannot protect the public interest in reliable service unless it can examine the fitness of prospective assignees or transferees.

The Commission will therefore reject the assignment provision as inconsistent with the public interest, convenience, and necessity. The Commission notes the deficiency could be cured by adding a provision requiring 60 days notice to the Commission of any proposed assignment or transfer.

4. Amendment

In previous Orders, the Commission has found that any contract amendment must be approved by the Commission.²³ In this docket also, the Commission finds the contract s failure to require Commission

²⁰ For a similar analysis and result, see *In the Matter of the Joint Petition of Sprint Minnesota, Inc. and Dakota Services Limited for Approval of an Interconnection Agreement*, Docket No. P-5669, 430/M-99-701, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (July 14, 1999).

²¹ See *In the Matter of the Joint Application of Nextel West Corp. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement*, Docket No. P-421/EM-98-323, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (May 21, 1998), pages 3-4.

²² See, e.g. *In the Matter of the Joint Application of Harmony International and U S WEST Communications, Inc. for Approval of an Interconnection Agreement*, Docket No. P-421/EM-98-1865, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (February 22, 1999) at page 3.

²³ See, e.g., *In the Matter of the Joint Petition of Sprint Minnesota, Inc. and Tin Can Communications, L.L.C. for Approval of a Master Resale Agreement*, Docket No. P-430/AM-98-653, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (July 14, 1998) and *In the Matter of an Application by WinStar Wireless of Minnesota, Inc. and Contel of Minnesota, Inc. d/b/a GTE Minnesota for Approval of an Interconnection Agreement*, Docket No. P-407,5246/M-98-9, ORDER REJECTING INTERCONNECTION AGREEMENT (March 23, 1998).

approval of amendments inconsistent with the public interest, convenience, and necessity. The Commission cannot perform its duty to protect the integrity of the network, ensure high quality service, and promote a free and open telecommunications market if interconnection agreements can be amended without Commission approval.

This would not only leave the public interest unprotected, it would render meaningless the Act's requirement that state commissions review and approve interconnection agreements. To guard against such a development, the Commission has required adding the following language: Any amendment to this agreement shall be approved by the Minnesota Public Utilities Commission.²⁴

In this case the Commission finds likewise, that the public interest, convenience, and necessity require such language. Failure to provide for Commission review and approval of contract amendments would leave the public interest unprotected.

5. Dispute Resolution - Section 27

Section 27 of the MS Agreement does not require that parties submit disputes arising thereunder to the Commission and authorizes them to utilize other forums including non-Commission arbitration proceedings and other alternative dispute resolution (ADR) venues, as well as state and federal courts and administrative agencies.

The Commission believes the public interest, convenience, and necessity require it to retain the ability to set aside any arbitration or other ADR decision interpreting, construing, applying or amending the interconnection agreement in a manner contrary to the public interest. The Commission is charged with maintaining the integrity of the network, ensuring high standards of consumer protection, and nurturing a competitive telecommunications environment. The Commission cannot discharge these responsibilities while ceding final authority over interconnection agreements to independent arbitrators or other ADR practitioners. The Commission must be recognized as having authority to review the arbitrators' decisions.

The Commission will therefore reject the MS Agreement's dispute resolution provisions.²⁵

²⁴ *In the Matter of the Application for Approval of the Agreement for Interconnection and Traffic Interchange between Cellular Mobil Systems of St. Cloud, Minnesota L.L.P. and US WEST Communications, Inc.*, Docket No. P-421/EM-97-437, ORDER REJECTING CONTRACT (July 28, 1997).

²⁵ For a similar analysis and result, see *In the Matter of the Joint Petition of Sprint Minnesota, Inc. and Tin Can Communications, L.L.C. for Approval of a Master Resale Agreement*, Docket No. P-430/AM-98-653, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (July 14, 1998) at pages 2-3.

The deficiency can be cured by adopting the dispute resolution language appearing in Commission-approved negotiated interconnection agreements.²⁶

6. Third Party Beneficiaries - Section 30

The third-party beneficiary language in Section 30 of the Agreement does not explicitly acknowledge the Commission's continuing oversight of, and interest in, the parties' dealings under the interconnection agreement. The Commission finds that the contract's failure to acknowledge the Commission's continuing responsibility to monitor performance thereunder compels its rejection. Under Minnesota law and the Federal Act, the Commission has a duty to protect the public interest as it is affected by interconnection agreements. This duty does not end at the time of final contract approval, but continues throughout the life of the contract, as its consequences unfold.

In order to fulfill its ongoing regulatory duty, the Commission must have notice of any further administrative or judicial or other proceeding regarding the contract, and the opportunity to intervene in the proceeding on behalf of the general public. The Commission finds the agreement inconsistent with the public interest, convenience, and necessity for failure to afford the Commission the necessary notice and opportunity to intervene. The public interest requires the addition of the following language, as previously approved:

Notwithstanding the foregoing, parties agree to give notice to the Public Utilities Commission (MPUC) of any lawsuits or other proceedings that involve or arise under the agreement to ensure the MPUC has the opportunity to seek to intervene in these proceedings on behalf of the public interest.²⁷

In sum: having reviewed the MS Agreement and the parties' comments, the Commission finds that the proposed agreement does not meet the standards for interconnection agreements with respect to the six areas identified by the Department. The Commission will therefore reject the MS Agreement without prejudice. It is anticipated that the parties will amend the agreement to include the language identified by the Department and that MCImetro will resubmit it, as amended.

²⁶ See, e.g. the Dispute Resolution language approved in *In the Matter of the Application for Approval of an Interconnection Agreement Between Allegiance Telecom of Minnesota, Inc. and GTE Under the Federal Telecommunication Act of 1996*, Docket No. P-5880,407/M-00-236, ORDER APPROVING INTERCONNECTION AGREEMENT (June 5, 2000).

²⁷ *In the Matter of the Joint Petition of U S WEST Communications, Inc. and U S WEST Wireless, L.L.C. for Approval of an Interconnection Agreement*, Docket No. P-421/EM-98-369, ORDER REJECTING INTERCONNECTION AGREEMENT AND REQUIRING FURTHER FILINGS (June 2, 1998) at page 4.

ORDER

1. The Commission hereby approves Qwest/MCI s Amendment to their interconnection agreement.
2. Qwest s Motion to Dismiss MCI s application for review of the Master Service Agreement is denied.
3. The Master Service Agreement is rejected without prejudice for failure to contain six terms established by Commission precedent and required by the public interest, convenience and necessity.
4. Within two weeks of this Order, Qwest and MCImetro shall either file a revised Master Service Agreement incorporating the Department s recommended changes or inform the Commission that agreement has not been reached.
5. The Commission hereby delegates to the Executive Secretary authority to examine any revisions filed by the parties pursuant to Order Paragraph 4 and confirm whether appropriate changes have been made, and, if so, issue a letter to the parties approving the revised agreement as of the date the revisions were filed.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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Commission reject the ICA Amendment and QPP Agreement as contrary to the public interest.

Motion to Dismiss

At the outset, we must first determine whether the parties are required to file the QPP Agreement for our approval. In its motion to dismiss, Qwest contends that our ability to review and approve the QPP Agreement is a question of federal law governed by the Act and two primary controlling federal authorities: the recent decision of the United States Court of Appeals in *United States Telecom Ass'n v. FCC*, 359 F3d 554 (D.C. Cir. March 2, 2004) (*USTA II*) and a Declaratory Order issued by the FCC in October 2002 (*Declaratory Order*).¹

Qwest contends that it has no duty under §252 of the Act to file a voluntarily negotiated agreement with a state commission if the underlying services or elements do not have to be provided under §251 of the Act. It emphasizes that the switching and shared transport services encompassed by the QPP Agreement are no longer required to be unbundled by incumbent LECs pursuant to the recent decisions by the FCC in its *Triennial Review Order* and by the DC Circuit in the *USTA II* case.² Absent a §251 mandate to supply these services, Qwest asserts “there is no §252 obligation to file a privately-negotiated Agreement with a state commission, nor does the state commission have §252 authority to review and approve the Agreement.”

In support of its motion, Qwest also relies on the FCC’s *Declaratory Order*, which addressed the circumstances under which ILEC/CLEC Agreements must be filed with state commissions. In that Order, the FCC found:

[W]e find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).³

Qwest emphasizes that, since switching and shared transport are no longer required to be provided as UNEs under §251, the *Declaratory Order* makes clear that

¹Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (Oct 4, 2002) (*Declaratory Order*).

² Qwest notes that *USTA II* vacated certain FCC rules relating to the unbundling of network elements, including mass market switching. In addition, the *Triennial Review Order* provides that shared transport is not required to be unbundled under §251 where unbundled switching is not required to be unbundled. Qwest Motion at 4-6.

³ *Id.* at Paragraph 8. (Emphasis in original.)

“Qwest has no obligation to file the QPP Agreement and the Commission has no authority to review and approve it” under §252.⁴

Qwest further argues that agreements pertaining to non-§251 network elements—switching and shared transport in this instance—are subject to exclusive federal jurisdiction. This includes, for example, network elements that have been removed from the FCC’s list of unbundled network elements but which still must be unbundled pursuant to §271 of the Act. Qwest asserts that the filing and review of Agreements entered into pursuant to §271 “is a federal matter which has not been delegated to the states.”⁵ Likewise, Qwest adds, compliance with other federal statutory requirements is within the exclusive purview of the FCC.⁶ Qwest contends that state filing requirements “would conflict irreconcilably” with the existing federal regulatory regime established to deal with contracts for interconnection services and elements not covered by §251.⁷

MCI, AT&T and the Commission Staff advance numerous arguments in opposition to Qwest’s Motion. Rather than address these matters at length, it is necessary to focus only upon the FCC’s recent *Order and Notice of Proposed Rulemaking*⁸ (*Interim Rules Order*), that continued, by temporary rule, the requirement for incumbent LECs to provide network elements, including the switching and shared transport elements encompassed by the QPP Agreement. The *Interim Rules Order* at Paragraph 16, states:

Specifically, we conclude that the appropriate interim approach here is to require incumbent LECs to continue providing unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under their interconnection Agreements as of June 15, 2004. These rates, terms, and conditions shall remain in place until the earlier of the effective date of final unbundling rules promulgated by the Commission or six months after the Federal Register publication of the Order, except to the extent that they are or have been superceded by (1) voluntary negotiated Agreements, (2) an intervening Commission order affecting specific unbundling obligations (e.g., an order addressing a pending petition for reconsideration), or (3) (with respect to rates only) a state public utility commission order raising the rates for network elements.

Likewise, at Paragraph 20 the FCC states:

⁴ Qwest Motion at 7.

⁵ *Id.* at 8.

⁶For example, Qwest notes that the FCC has the authority to require filing of contracts to provide network elements that do not meet the “necessary and impair” test (in §251(d)), to ensure that such Agreements comply with §202 of the Act regarding non-discrimination. *Id.* at 9.

⁷ *Id.* at 10.

⁸ *Order and Notice of Proposed Rulemaking*, FCC 04-179, WC Docket 04-313 (released August 20, 2004).

Our interim requirements will, during the first six months of our year-long plan, maintain existing unbundling obligations to minimize disruptive effects and marketplace uncertainty that otherwise would result from the abrupt elimination of particular unbundling requirements.

It is clear from these statements that the purpose of the *Interim Rules Order* is to continue the §251 unbundling obligations of incumbent LECs until such time as permanent rules can be adopted. Since Qwest remains obligated to continue providing unbundled access to the network elements included in the QPP, the QPP is an interconnection agreement that must be filed for state commission approval pursuant to §252 of the Act.

Qwest claims that the *Interim Rules Order* does not require the QPP to be filed with state commissions because incumbent LECs are no longer required under §§251(b) or (c) to provide switching and transport network elements, thereby excluding the QPP from being considered an interconnection agreement under the FCC's *Declaratory Order*.⁹ The *Interim Rules Order*, however, "maintain[s] existing unbundling obligations" promulgated by the FCC prior to the effective date of the *USTA II* decision.¹⁰ To the extent Qwest retains an "ongoing obligation pertaining to . . . unbundled elements," the QPP is properly considered as an interconnection agreement under the terms of the *Declaratory Order*.¹¹

Qwest points to the language in Paragraph 16 of the *Interim Rules Order* cited above, and emphasizes that the QPP is a *voluntarily negotiated agreement* which has superseded the pre-existing rates, terms and conditions applicable to unbundled switching and transport elements. While Qwest and MCI may have agreed to different rates, terms and conditions in the QPP, the fact remains that Qwest continues to be obligated by the *Interim Rules Order* to provide unbundled access to these network elements.

Finally, the *Interim Rules Order* includes a Notice of Proposed Rulemaking that seeks comment regarding whether commercially negotiated agreements for access to unbundled elements that are not required to be unbundled pursuant to §251(c)(3) should be treated under §252 or some other provisions of law. This inquiry suggests that the FCC does not preclude state commissions from requiring such filings. Indeed, the FCC's *Declaratory Ruling* declines to "establish an exhaustive, all-encompassing 'interconnection

⁹ As noted above, the *Declaratory Order* provides "that an agreement that creates an *ongoing* obligation pertaining to [section 251(b) and (c) requirements] is an interconnection agreement that must be filed [with state commissions] pursuant to section 252(a)(1)." *Declaratory Order* at Paragraph 8.

¹⁰ On October 6, 2004, the DC Circuit issued an order holding in abeyance until January 4, 2005, a petition for mandamus seeking to overturn the FCC's *Interim Rules Order*. As a consequence, the ILECs remain obligated to continue providing unbundled access to network elements consistent with the terms and conditions set forth in the *Interim Rules Order*.

¹¹ *Declaratory Order* at Paragraph 8.

agreement' standard," but rather emphasizes that the "states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard."¹²

Based on the foregoing, Qwest's motion to dismiss is denied.

Section 252 Review

Having concluded that the parties are required to file both the ICA Amendment and the QPP Agreement, we proceed with our review under §252. Under the Act, the Commission must approve or reject an agreement reached through voluntary negotiation within 90 days of filing.¹³ The Commission may reject an agreement only if it finds that:

- (1) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

In this case, Staff recommends the Commission reject the agreement because Section 4.0 removes all aspects of UNE-P, mass market switching and shared transport from the agreement and states that those elements are available in a separate agreement, *i.e.*, the QPP Agreement, that need not be filed with the Commission for approval. Staff explains that this provision is contrary to law and the public interest, as there is no assurance that future QPPs will be filed for Commission approval. MCI disagrees with Staff's interpretation of Section 4.0 and contends that the parties did not intend to usurp the Commission's ability to approve the agreement under §252.

Section 4.0 provides, in pertinent part:

Agreement Not to Order. During the term of this Agreement Qwest shall not offer or provide to MCI, and MCI shall not order or purchase from Qwest, unbundled mass marker switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of the unbundled network element platform ("UNE-P") out of its existing interconnection agreements with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. Sections 252 and 252 (sic) that

¹²*Id.* at Paragraph 11. The FCC further states, "[b]ased on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement' and, if so, whether it should be approved or rejected." *Id.* at Paragraph 10.

¹³ As noted above, both Qwest and MCI Metro made separate filings with the Commission. We consider the August 12, 2004 date of MCI Metro's filing, which contained the complete agreement between the parties, to be the effective date of filing for purposes of our review under §252.

MCI or one of its affiliates may in the future enter into with Qwest and MCI waives any right under applicable law in connection therewith. (Emphasis Added.)

We acknowledge the parties' desire to move the provision of UNE-P out of its existing interconnection agreement and into a separate commercial agreement. In doing so, however, the parties agreed that the commercial agreement would not be subject to our review pursuant to §252 of the Act. Accordingly, the highlighted language conflicts with our determination above that, because Qwest remains obligated to continue providing unbundled access to the network elements included in the QPP Agreement, the QPP Agreement is an interconnection agreement that must be filed for state commission approval pursuant to §252 of the Act.

As Staff notes, parties may negotiate to change the rates, terms and conditions of interconnection agreements; however, they cannot negotiate away the filing requirements set forth in §252. We agree with Staff that the ICA Amendment and related QPP Agreement are contrary to law and the public interest, convenience, and necessity. The agreements should be rejected.

ORDER

IT IS ORDERED that the ICA Amendment and QPP Agreement between Qwest Communications and MCImetro Access Transmission Services, L.L.C., are rejected.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement Between Qwest Corporation) DOCKET NO. 04-2245-01
and MCImetro Access Transmission) ORDER DENYING
Services, LLC for Approval of an) MOTION TO DISMISS
Amendment for Elimination of UNE-P and)
Implementation of Batch Hot Cut Process)
and QPP Master Service Agreement)

ISSUED: September 30, 2004

By The Commission:

On July 27, 2004, MCImetro Access Transmission Services, LLC (MCI) filed with the Commission two documents – 1. An Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts (Interconnection Agreement Amendment), and 2. A Master Service Agreement for the Provision of Qwest Platform Plus Service (QPP Service Agreement). The Interconnection Agreement Amendment essentially makes three changes to an existing interconnection agreement between MCI and Qwest Corporation (Qwest). They are – 1. Adding the terms and conditions for hot cut batches, 2. An agreement that Qwest will not offer, nor will MCI order, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport as part of the unbundled network element platform (UNE-P) out of the existing interconnection agreement or other agreement governed by 47 U.S.C. §§ 251 and 252, and 3. The availability of line splitting for loops provided pursuant to the existing interconnection agreement. The QPP Service Agreement is a voluntarily negotiated agreement between MCI and Qwest by which Qwest will provide services (QPP services) consisting of “the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, “ICAs”) as the same existed on June 14, 2004.” The QPP Service Agreement also provides that Qwest will combine the QPP services with loops which MCI may have obtained through other interconnection agreements. The QPP Service Agreement further provides for the performance targets and the recurring and nonrecurring charges for QPP services. Through its filing, MCI requested Commission review and approval of the Interconnection Agreement Amendment and the QPP Service Agreement.

On August 13, 2004, Qwest filed a Motion to Dismiss Application for Approval of Negotiated Commercial Agreement (Dismissal Motion). Qwest agrees that the Interconnection Agreement Amendment is subject to filing and Commission review and approval, but argues that is not the case for the QPP Service Agreement. Qwest argues that the QPP Service Agreement does not need to be submitted to the Commission pursuant to 47 U.S.C. §252. Qwest argues that the QPP services are not required to be provided pursuant to 47 U.S.C. §251 (b) and (c). Qwest therefore concludes that the QPP Service Agreement is not an interconnection agreement which is subject to the Commission’s review and approval under §252. Qwest argues that the Commission has no authority under federal or state law to review or approve the QPP Services Agreement. Multiple



parties filed opposition to the Dismissal Motion. On August 23, 2004, MCI filed its Response to Qwest's Motion to Dismiss. On August 27, 2004, the Division of Public Utilities (Division) filed its Response in Opposition to the Motion of Qwest to Dismiss and Application for Approval of an Interconnection Agreement. On August 25, 2004, AT&T Communications of the Mountain States, Inc., and TCG Utah (ATT) filed ATT's Response to MCI's Agreement Filing and Qwest's Motion to Dismiss [javascript:WPSHOW\('WPFootnote1', WPFootnote1 \)](#) [javascript:WPSHOW\('WPFootnote1', WPFootnote1 \)](#). On August 31, 2004, and again on September 9, 2004, Qwest replied to the opposing arguments of MCI, the Division and ATT. We conclude that Qwest's argument is in error. We conclude that the QPP Service Agreement should be filed and that the Commission does have authority to review and approve the QPP Service Agreement.

DISCUSSION



Much of the parties' argument is based upon the application of 47 U.S.C. §§ 251 and 252 provisions and two FCC decisions. [javascript:WPSHOW\('WPFootnote2', WPFootnote2 \)](#) [javascript:WPSHOW\('WPFootnote2', WPFootnote2 \)](#) With respect to agreement submission to state commissions, 47 U.S.C. §252 provides, in relevant part:

(a) Agreements Arrived At Through Negotiation. – (1) Voluntary Negotiations. – Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

...

(e) Approval By State Commission. – (1) Approval Required. – Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State Commission. A State Commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies. (2) Grounds for Rejection. – The State Commission may only reject – (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that – (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement, or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or (B) an agreement (or portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Although this language gives an unambiguous directive that an agreement “shall be submitted to the State commission”, Qwest argues that a decision of the Federal Communications Commission (FCC) requires a different result.

In *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-98, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) (Declaratory Order) the FCC responded to a request for guidance

about the types of negotiated contractual arrangements that should be subject to the filing requirement of §252(a)(1). Before the FCC, Qwest argued that agreements subject to the filing requirement are those that “include (i) a description of the service or network element being offered; (ii) the various options available to the requesting carrier (e.g., loop capacities) and any binding contractual commitments regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option (e.g., recurring and non-recurring charges, volume or term commitments).” *Id.*, at ¶ 2. As part of Qwest’s argument, Qwest maintained that only limited portions of an agreement (a schedule of itemized charges and associated descriptions of the services to which the charges apply) should be filed. Qwest also argued that agreements concerning network elements that have been removed from the national list of elements subject to mandatory unbundling need not be filed. *Id.*, at ¶¶ 3, 5 and 8. Commenters opposed the narrow reading of the filing statute proposed by Qwest. Some sought a filing requirement for all types of agreements, hoping to avoid any question of what types of agreements should be filed. *Id.*, at ¶ 5 and fn. 26.

In reaching its resolution, the FCC first noted that it is the state commissions who will determine what agreements are subject to the filing requirement. *Id.*, at ¶ 7. “Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an ‘interconnection agreement’ and, if so, whether it should be approved or rejected.” *Id.*, at ¶ 10. The FCC’s conclusion on the issue presented was that “an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).” *Id.*, at ¶ 8. The QPP Service Agreement is subject to the filing requirement required by the statute and under the Declaratory Order’s conclusion. Its terms fall within §252’s rubric of “interconnection, services, or network elements,” its terms deal with network elements and the compensation to be paid for them. QPP services are unavoidably network elements under 47 U.S.C. §153 (45)’s definition. The QPP Service Agreement addresses ongoing obligations for matters within the list give by the



FCC in the Declaratory Order decision.

Qwest’s argument before us, for a contrary conclusion, is similar to its argument before the FCC – *vis*, only agreements dealing with network elements which a carrier does not voluntarily agree to provide, but is compelled to provide through the FCC’s determination under §251(d)’s “necessary” and “impair” analysis, trigger §252 (a)(1)’s filing requirement. Qwest’s position is based on language contained in footnote 26 of the Declaratory Order.

[javascript:WPShow\('WPFootnote3', WPFootnote3 \)](#)[javascript:WPShow\('WPFootnote3', WPFootnote3 \)](#)There, the FCC states:

We therefore disagree with the parties that advocate the filing of all agreements between an incumbent LEC and a requesting carrier. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America’s suggestion to require Qwest to file with us, under section 211, all agreements to competitive LECs entered into as “settlements of disputes” and publish those terms as ‘generally available” terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. §211.



We do not apply this language in as limiting a fashion as advocated by Qwest. We consider the FCC's footnote 26 language as addressing the contentions made by the comments identified therein. These comments had advocated that the §252(a)(1) filing requirement should be applied to every agreement between an incumbent LEC and another carrier. It was also suggested that §252 included settlement agreements that resolved past disputes. The FCC rejected these comments, concluding that agreements that should be filed are not every type of agreement between carriers, but interconnection agreements – those that deal with ongoing obligations dealing with resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation. *Id.*, at ¶ 8.

[javascript:WPSHOW\('WPFootnote4', WPFootnote4 \)](#)[javascript:WPSHOW\('WPFootnote4', WPFootnote4 \)](#)The language from the footnote must be considered in conjunction with the language used in the body of the Declaratory Order and the statutory language. The operative consideration is whether the agreement's terms address or create an ongoing obligation dealing with interconnection, services or network elements.



Reading §252's filing requirement, and state commission approval or rejection, to apply only to an agreement whose terms address a compelled §251 matter, rather than to all interconnection agreements dealing with such matters (whether included by voluntary negotiation or by compulsion), completely ignores the specific language of the statute. Congress did task the FCC with responsibility to determine what minimal access to network elements, required under §251(c)(3), would be compelled through §252(d)'s "necessary" and "impair" standards. But in wording §252, Congress did not restrict the need to file agreements with state commissions to only those agreements whose terms address interconnection, services, or network element matters by compulsory mandate related to §251(b) or (c). Congress created a wider ambit. Congress required filing and state commission approval or rejection of agreements where the incumbent local exchange carrier "negotiate[s] and enter[s] into a binding agreement with a requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) or (c) of section 251. . . . The agreement shall be submitted to the State commission under subsection (e) of this section." [javascript:WPSHOW\('WPFootnote5', WPFootnote5 \)](#)[javascript:WPSHOW\('WPFootnote5', WPFootnote5 \)](#)47 U.S.C. §252(a)(1). Congress clearly anticipated agreements that would not be driven by §251(b) or (c). It required these agreements to be filed with and reviewed by state commissions. To do otherwise fails to give any attention to the specific language Congress used in enacting §252.

That Congress includes all interconnection agreements for state commission filing and review, and not just those that address compelled interconnection terms, is not unwarranted. Qwest's limitation, to include only agreements whose terms address network elements whose provision is compelled, fails to recognize the differing concerns contemplated by Congress. The criteria by which the FCC is to base compelled provision are not coterminous with the criteria by which a state commission is to approve or reject an agreement. Mandatory provision is minimally based upon §251(d)(2)'s test that access to a proprietary network element is necessary and that lack of access to a network element impairs a carrier's ability to provide services. 47 U.S.C.

§252(d)(2)(A) and (B). State commission review of an agreement is based on entirely different criteria. A state commission can only reject a voluntarily negotiated agreement if the state commission finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. §252(e)(2)(A). A state commission can reject an



arbitrated agreement if it finds the agreement does not meet the requirements of §251 or §252(d). [javascript:WPSHOW\('WPFootnote6', WPFootnote6 \)javascript:WPSHOW\('WPFootnote6', WPFootnote6 \)](#)47 U.S.C. §252(e)(2)(B). Compelled aspects are driven by concerns for the interests of the requesting carrier. Filing and state commission review are driven by concerns for interests of other entities and public interests. These concerns go beyond those relating to the incumbent carrier and the interconnecting carrier whose agreement is at issue.

We address Qwest's argument based on the U.S. Court of Appeals decision found in *United States Telephone Association v FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*), only to note that Qwest's argument is based on Qwest's flawed view that §252 filing and review is limited to agreements dealing with network elements whose provision is compelled under the "necessary" and "impair" standards of §251(d). In *USTA II*, the court vacated the FCC's determinations identifying which network elements fell within the impairment analysis of §251(d) and the FCC's delegation to state commissions to make further, limited impairment determinations. As argued by Qwest, "Qwest is no longer obligated to provide unbundled access to local switching or shared transport pursuant to section 251 of the federal Act. . . . [A]n agreement relating to these elements is not required to be filed for approval pursuant to section 252." Qwest Corporation's Joint Reply to MCIMetro, AT&T and the Division of Public Utilities in Support of Its Motion to Dismiss, at 3.

As discussed above, our conclusion is not based on any notion that the network elements covered by the QPP Services Agreement are provided under §251 impairment compulsion (whether the impairment determination is made by the FCC or a state commission pursuant to a purported FCC delegation). Our conclusion is based upon Congress' unambiguous statutory language that voluntarily negotiated agreements made "without regard to the standards set forth in subsections (b) or (c) of section 251 . . . shall be submitted to the State commission under subsection (e) of this section [252]." 47 U.S.C. §252(a)(1). Congress' §252 wording makes Qwest's argument based on §251 compulsion standards for network elements irrelevant. Indeed Congress' language can easily be viewed as directly contradicting the position advocated by Qwest. Section 252 filing and review is not limited by §251 compulsory provision determinations, it is required in spite of such determinations.

Based upon our discussion and conclusion made herein, we direct that any interconnection agreement which creates or addresses an ongoing obligation of an incumbent local exchange carrier for interconnection, services or network elements must be filed with us and is subject to our review for approval or rejection pursuant to 47 U.S.C. §252. Wherefore, both the Interconnection Agreement Amendment and the QPP Services Agreement, submitted by MCIMetro on July 27, 2004, are properly filed with the Commission and can be reviewed by the Commission for approval or rejection. We therefore enter this ORDER denying Qwest's Motion to Dismiss.

DATED at Salt Lake City, Utah, this 30th day of September, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

GW#40491

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 Marc Spitzer, Chairman
4 William A. Mundell
5 Jeff Hatch-Miller
6 Mike Gleason
7 Kristin K. Mayes

SEP 13 2004

6 IN THE MATTER OF THE APPLICATION OF
7 MCImetro ACCESS TRANSMISSION SERVICES,
8 LLC, FOR APPROVAL OF AN AMENDMENT
9 FOR ELIMINATION OF UNE-P AND
IMPLEMENTATION OF BATCH HOT CUT
PROCESS AND QPP MASTER SERVICES

Docket No. T-01051B-04-0540
T-03574A-04-0540

10
11 **STAFF'S RESPONSE TO QWEST'S**
12 **MOTION TO DISMISS APPLICATION FOR REVIEW**
13 **OF NEGOTIATED COMMERCIAL AGREEMENT**

14 **I. INTRODUCTION**

15 On July 16, 2004, Qwest Corporation ("Qwest") and MCImetro Access Transmission
16 Services, L.L.C. ("MCI") entered into two separate agreements. The first agreement was labeled an
17 Amendment to their Interconnection Agreement. The second agreement was labeled the QPP Master
18 Service Agreement. The first agreement both MCI and Qwest filed for Commission approval under
19 47 U.S.C. Section 252(e). The second agreement Qwest filed with the Commission for informational
20 purposes only. However, MCI subsequently filed the second agreement with the Commission for
21 approval under 47 U.S.C. Section 252(e). On August 6, 2004, Qwest filed a Motion to Dismiss
22 MCI's Application for Commission review and approval of this Agreement. For the following
23 reasons, Qwest's Motion to Dismiss should be denied.

24 **II. DISCUSSION**

25 **A. State Commission Have Broad Authority Under Section 252 Over the Review and**
26 **Approval of Interconnection Agreements**

27 Under Section 252 of the Federal Act, State commissions are given broad authority to review
28 and approve "interconnection agreements" between carriers. The Act encourages carriers to

1 | undertake voluntary negotiations and to enter into voluntary binding agreements without regard to the
2 | standards set forth in subsections (b) and (c) of Section 251 of the Act. If disputes arise, the State
3 | commission resolves them through an arbitration which is binding on both parties. In addition, the
4 | State commissions are the designated repository for all such agreements, whether arrived at through
5 | arbitration or voluntary negotiation.

6 | The FCC has addressed the types of agreements which fall within the scope of Section 252
7 | several times, the most recent being in response to a Petition for Declaratory Ruling filed by Qwest.
8 | In its Declaratory Ruling in response to Qwest's Petition, the FCC stated that if the agreement
9 | pertained to an ongoing obligation pertaining to resale, number portability, dialing parity, access to
10 | rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation,
11 | it was an interconnection agreement over which the State commission has jurisdiction.

12 | The FCC also stated that the State commissions should be responsible for applying, in the first
13 | instance, the statutory interpretation to the terms and conditions of specific agreements. The FCC
14 | went on to state that " we believe this is consistent with the structure of section 252, which vests in
15 | the states the authority to conduct fact-intensive determinations relating to interconnection
16 | agreements."

17 | The importance of the Section 252 review and filing requirements was underscored by the
18 | FCC in the following passage from their *Local Competition First Report and Order*.

19 | "State commissions should have the opportunity to review all agreements,
20 | including those that were negotiated before the new law was enacted, to ensure
21 | that such agreements do not discriminate...and are not contrary to the public
22 | interest...Requiring all contracts to be filed also limits an incumbent LEC's
23 | ability to discriminate among carriers, for at least two reasons. First, requiring
24 | public filing of agreements enables carriers to have information about rates,
25 | terms, and conditions that an incumbent LEC makes available to others.
26 | Second, any interconnection, service or network element provided under an
27 | agreement approved by the state commission under section 252 must be made

28 | available to any other requesting telecommunications carrier upon the same
29 | terms and conditions, in accordance with section 252(i)...Conversely,
30 | excluding certain agreements from public disclosure could have
31 | anticompetitive consequences."

1 **B. Section 252(e) Requires State Commission Review and Approval of “Any”**
2 **Interconnection Agreement**

3 Section 252(e)(1) requires that “any” agreement for interconnection be filed with and
4 reviewed by the State commission. Section 252(e)(1) provides:

5 “Any interconnection agreement adopted by negotiation or arbitration shall be
6 submitted for approval to the State commission. A State commission to which
7 an agreement is submitted shall approve or reject the agreement, with written
8 findings as to any deficiencies.” (Emphasis added).

9 Qwest relies upon a recent FCC Declaratory Ruling and Section 252(a)(1) of the Act to argue
10 that the Arizona Commission has no authority to review and approve its QPP Master Service
11 Agreement with MCI, despite the fact that the Agreement governs the provision of unbundled
12 network elements, interconnection and access by Qwest to MCI. With regard to Section 252(a)(1),
13 Qwest argues that the language of that section limits the Commission’s authority to the provision of
14 network elements, interconnection or services made under Section 251 of the Act. That provision of
15 the Act states in relevant part: “Upon receiving a request for interconnection, services, or network
16 elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into
17 a binding agreement with the requesting telecommunications carrier or carriers without regard to the
18 standards set forth in subsections (b) and (c) of section 251.”

19 However, this language addresses only voluntary requests for interconnection, services or
20 network elements and is not meant to limit the scope of the review authority of state commissions
21 under the Act. The provision which governs the review authority of state commissions is actually
22 Section 252(e) which is cited above. As already discussed, under this provision the Commission is
23 given review and approval authority over any interconnection agreement. There is no limiting
24 language as Qwest suggests that only interconnection agreements addressing network elements,
25 interconnection or access under Section 251 must be filed, reviewed and approved by the
26 Commission. Had Congress intended to limit the scope of the filing obligation or the State
27 commission’s review and approval authority in this fashion, it is presumed that Congress would
28 merely have added the same language to Section 252(e) which it did not. The fact that Congress did
not underscore that the Commission’s review authority under Section 252 is very broad and extends

1 to any agreement which addresses an ongoing obligation relating to interconnection, network
2 || elements or access.

3 Qwest also relies upon the language of Section 251(a)(1) as the basis for its second argument
4 that “the entire premise of the duty to file an agreement with a state commission under Section 252 is
5 based on the fact that the service or element provided is required by Section 251(b) or (c).” Qwest
6 also relies upon a statement in a recent FCC Declaratory Ruling that only agreements “that contain on
7 ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1).” However
8 this ignores the fact that Section 251(a)(1) itself expressly permits parties to negotiate and enter into a
9 binding interconnection agreement **without regard to** the standards set forth in Section 251 of the
10 Act. Still, these interconnection agreements are subject to the state filing and review process.

11

12 **1. Network Elements Which Qwest Must Continue to Make Available Under
Section 271 are Interconnection and Access Obligations**

13 At issue as a result of Qwest’s Motion, is whether the Commission has jurisdiction under
14 || Section 252 to review and approve the “Qwest Master Service Agreement” which Qwest calls a
15 “commercial agreement,” in which Qwest has agreed to provide Qwest Platform Plus services to
16 MCI. Qwest concedes on page of its Motion that Qwest is required to continue to make these
17 || services available under Section 271 of the Federal Act and that the elements consist primarily of the
18 local switching and shared transport network elements in combination with other services.

19 The services that the QPP Master Services Agreement covers are several network elements
20 that have been affected by the D.C. Circuit’s vacatur in *USTA II*. Thus, even though Qwest may no
21 longer have to make an element available under Section 252(d)(3), Qwest may still have to make that
22 || element available under Section 271 as part of its obligations under the Competitive Checklist. The
23 || provisions of Section 271 at issue are contained at 47 U.S.C. Section 271(c)(2)(B) and provide
24 || relevant part that access or interconnection provided or generally offered by a Bell operating
25 || company to other telecommunications carriers meets the requirements of the 271 Competitive
26 || Checklist if it includes

27

28

- 1 “(iv) Local loop transmission from the central office to the customer’s
- 2 (v) Local transport from the trunk side of a wireline local exchange carrier
- 3 (vi) Local switching unbundled from transport, local loop transmission, or
- 4 other services.”

5 These provisions require Qwest to continue to provide certain network elements, irrespective of any
6 findings of impairment under Section 251(d)(2).

7 There can be little doubt that the obligations contained in Section 271 of the Federal Act are
8 “interconnection” and “access” obligations which are properly included in an interconnection
9 agreement under Section 252. In fact this is supported by the plain language of Section 271. The title
10 of the 271 section in which these specific unbundling obligations are contained is entitled “SPECIFIC
11 INTERCONNECTION REQUIREMENTS”.

12 Moreover, under sub-part (A) of Section 271(c)(2), the BOC is deemed to meet the
13 requirements of that section if it is providing such access or interconnection in a Statement of
14 Generally Available Terms and Conditions (“SGAT”) or an Interconnection Agreement. Under
15 Section 252, the State commission is given authority to review and approve both the SGAT and all
16 interconnection agreements entered into between carriers operating within the State’s jurisdiction.
17 No separate review and approval process for interconnection agreements or SGAT provisions
18 containing 271 related provisions was established in Section 271, and therefore, it must be presumed
19 that Congress intended this review to take place in the context of the regular Section 252 review
20 process by State commissions.

21 **2. There is no Express Federal Filing Jurisdiction Under the Federal Act.**

22 Qwest’s arguments to the contrary notwithstanding, there is no express federal filing
23 jurisdiction under the Federal Act. See Qwest Motion at p. 7. As just indicated there was no
24 separate review and approval process established in Section 271 for interconnection agreements or
25 SGATs containing 271 related provisions, therefore, it must be presumed that this review is to take
26 place in the Section 252 review process by State commissions.

27 Qwest also argues that there “is an independent investiture of federal jurisdiction under the
28 1996 Act”. Qwest goes on to argue that “[t]he offering of the switching element...is subject to

1 | federal jurisdiction.” *Id.* Or, that the “filing and review (if any) of contracts entered into pursuant to
2 | Section 271(c)(2)(B) of the 1996 Act is a federal matter which has not been delegated to the states.”
3 | *Id.* What Qwest ignores is that the States’ authority pursuant to section 252 extends to both interstate
4 | and intrastate matters. Qwest makes a similarly flawed argument that “the federal nature of the
5 | service under the Federal Act automatically brings them into the ‘zone of federal jurisdiction.’ Qwest
6 | Motion at p. 8.

7 | In the *Local Competition First Report and Order*, the FCC discussed its role with that of the
8 | states over local competition matters:

9 | “We conclude that, in enacting sections 251, 252, and 253, Congress created a
10 | regulatory system that differs significantly from the dual regulatory system it
11 | established in the 1934 Act. (cite omitted). That Act generally gave
12 | jurisdiction over interstate matters to the FCC and over intrastate matters to
13 | the states. The 1996 Act alters this framework, and expands the applicability
14 | of both national rules to historically intrastate issues, and state rules to
15 | historically interstate issues. Indeed, many provisions of the 1996 Act are
16 | designed to open telecommunications markets to all potential service
17 | providers, without distinction between interstate and intrastate services.

14 | For the reasons set forth below, we hold that section 251 authorizes the FCC
15 | to establish regulations regarding both interstate and intrastate aspects of
16 | interconnection, services and access to unbundled elements. We also hold
17 | that the regulations the Commission establishes pursuant to section 251 are
18 | binding upon states and carriers and section 2(b) does not limit the
19 | Commission’s authority to establish regulations governing intrastate matters
20 | pursuant to section 251. **Similarly, we find that the states’ authority
21 | pursuant to section 252 also extends to both interstate and intrastate
22 | matters.** Although we recognize that these sections do not contain an explicit
23 | grant of intrastate authority to the Commission or of interstate authority to the
24 | states, we nonetheless find that this interpretation is the only reasonable way
25 | to reconcile the various provisions of sections 251 and 252, and the statute as
26 | a whole. (Emphasis added).

21 | Finally, Qwest is just plain wrong when it argues that State filing and review requirements are
22 | not permissible because they are inconsistent with this preemptive federal policy. Qwest Motion at p.
23 | 8. Staff is not aware of a federal policy favoring market agreements for elements offered under
24 | Section 271, and that this is presumptively preemptive of inconsistent state regulations. See Qwest
25 | Motion at p. 8. In fact the FCC has gone to great lengths not to preempt state jurisdiction except
26 | where warranted based upon case by case determinations.

1 In fact in its recent Declaratory Ruling, the FCC stated:

2 “Based on their statutory role provided by Congress and their experience to
3 date, state commissions are well positioned to decide on a case-by-case basis
4 whether a particular agreement is required to be filed as an ‘interconnection
5 agreement’ and, if so, whether it should be approved or rejected. Should
6 competition-affecting inconsistencies in state decisions arise, those could be
7 brought to our attention through, for example, petitions for declaratory ruling.
8 The statute expressly contemplates that the section 252 filing process will
9 occur with the states, and we are reluctant to interfere with their processes in
10 this area. Therefore, we decline to establish an exhaustive, all-encompassing
11 ‘interconnection agreement’ standard. The guidance we articulate today flows
12 directly from the statute and services to define the basic class of agreements
13 that should be filed. We encourage state commissions to take action to
14 provide further clarity to incumbent LECs and requesting carriers concerning
15 which agreements should be filed for their approval. At the same time,
16 nothing in this declaratory ruling precludes state enforcement action relating
17 to these issues.

18 * * * * *

19 Consistent with our view that the states should determine in the first instance
20 which sorts of agreements fall within the scope of the statutory standard, we
21 decline to address all the possible hypothetical situations presented in the
22 record before us.”

23 || Declaratory Ruling at paras. 10 and 11

24 Accordingly, it hardly appears that the FCC has preempted the States with respect to the
25 || determinations regarding the Section 252 filing obligation, as Qwest argues.

26 **C. The Federal Act Does Not Carve Out Any Exception to the Section 252(e)
27 Filing Requirement for What Qwest Calls a “Commercially Negotiated”
28 Agreement.**

29 Once again, Staff is not aware, nor has Qwest identified, any provision in the Federal Act
30 which defines “commercially negotiated” agreements and carves them out of the filing requirement
31 || of Section 252(e). This is merely a fiction created by Qwest and the RBOCs to escape their state
32 filing obligations under the Federal Act.

33 Indeed, in its recent Declaratory Ruling involving 252(e) filing obligations, the FCC expressly
34 || identified only a few exceptions to the Section 252(e) filing obligation. Those included settlement
35 || agreements, order and contract forms completed by carriers to obtain service pursuant to terms and
36 || conditions set forth in an interconnection agreement and agreements with bankrupt competitors that
37 || are entered into at the direction of a bankruptcy court or trustee and do not otherwise change the

1 | terms and conditions of the underlying interconnection agreement. See Declaratory Ruling at paras.
2 | 12, 13 and 14

3 | The Commission should reject Qwest's fictitious carve-out for "commercially negotiated"
4 | agreements and Qwest's attempt to once again shoot a cannon ball through the Federal Act's filing
5 | requirements.

6 | **D. The FCC Order Approving Qwest's 271 Application for Arizona, States that The**
7 | **FCC and Arizona Commission are to Work together to Ensure Enforcement of**
8 | **Qwest's 271 Obligations.**

8 | On December 3, 2004, the FCC granted Qwest's Application for Authorization to Provide In-
9 | Region, InterLATA Services in Arizona. As part of its Memorandum Opinion and Order, the FCC
10 | specifically discussed the relationship of the FCC and the Arizona Commission in the post-271
11 | approval enforcement process. At para. 59, the FCC stated:

12 | "Working in concert with the Arizona Commission, we intend to monitor
13 | closely Qwest's post-approval compliance for Arizona to ensure that Qwest
14 | does not "cease to meet any of the conditions required for [section 271]
15 | approval."

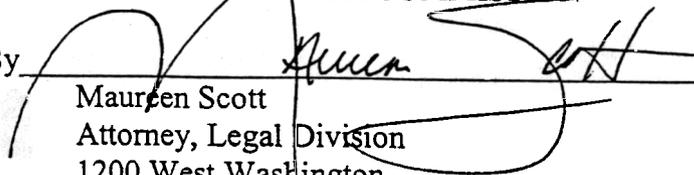
15 | Qwest is required to meet the Competitive Checklist requirements through provisions in its
16 | SGAT and interconnection agreements. This hardly appears to be a situation where the FCC
17 | intended to preempt State commission involvement in the post-271 approval enforcement process, as
18 | argued by Qwest.

19 | **III. CONCLUSION**

20 | The Commission should reject Qwest's Motion to Dismiss MCI's Application for Review and
21 | Commission Approval of the Master Services Agreement entered into between Qwest and MCI.

22 | Respectfully submitted this 10th day of September, 2004.

23 | ARIZONA CORPORATION COMMISSION

24 | By 

25 | Maurcen Scott
26 | Attorney, Legal Division
27 | 1200 West Washington
28 | Phoenix, AZ 85007
Telephone (602) 542-3402

1 | Original and 13 copies of the foregoing
2 | filed this 10th day of September, 2004,
3 | With:

4 | Docket Control
5 | Arizona Corporation Commission
6 | 1200 West Washington
7 | Phoenix, AZ 85007

8 | Copy of the foregoing mailed this 10th
9 | day of September, 2004, to:

10 | Thomas H. Campbell
11 | Michael T. Hallam
12 | Lewis and Roca, LLP
13 | 40 North Central Avenue
14 | Phoenix, AZ 85004
15 | Attorneys for MCImetro

16 | Thomas F. Dixon
17 | 707 17th Street, Suite 4200
18 | Denver, CO 80202
19 | Attorneys for MCImetro

20 | Timothy Berg
21 | Theresa Dwyer
22 | 3003 N. Central, Suite 2600
23 | Phoenix, AZ 85012

24 | Norman G. Curtright
25 | Qwest Corporation
26 | 4041 North Central, Suite 1100
27 | Phoenix, AZ 85012

28 | Todd Lundy
29 | Qwest Corporation
30 | 1801 California Street, Suite 4900
31 | Denver, CO 80202

32 | Richard Wolters
33 | AT&T
34 | 1875 Lawrence Street, 15th Floor
35 | Denver, CO 80202

36

37

38

1 | Joan S. Burke
2 | Osborn Maledon, P.A.
3 | 2929 N. Central, Suite 2100
4 | P. O. Box 36379
5 | Phoenix, AZ 85067-6379

6 | Christopher Kempley
7 | Chief Counsel, Legal Division
8 | Arizona Corporation Commission
9 | 1200 West Washington
10 | Phoenix, AZ 85007

11 | Ernest Johnson
12 | Director, Utilities Division
13 | Arizona Corporation Commission
14 | 1200 West Washington
15 | Phoenix, AZ 85007

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17 |
18 |
19 |
20 |
21 |
22 |
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**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Request of)	
)	DOCKET NO. UT-960310
MCIMETRO ACCESS)	
TRANSMISSION SERVICES, LLC)	DOCKET NO. UT-043084
)	
and)	ORDER NO. 01
)	
QWEST CORPORATION)	
)	
For Approval of Negotiated)	ORDER APPROVING
Interconnection Agreement, in its)	NEGOTIATED
Entirety, Under the)	INTERCONNECTION
Telecommunications Act of 1996)	AGREEMENT IN ITS ENTIRETY
.....)	

1 **Synopsis:** *The Commission grants the request of MCImetro for approval of the Thirteenth Amendment to the negotiated interconnection agreement between MCImetro and Qwest, including a portion denominated “Master Service Agreement for the Provision of Qwest Platform Plus.” The QPP and Thirteenth Amendment are parts of an integrated agreement. The agreement does not discriminate against any carrier not a party to the agreement, is consistent with state and federal law, and is consistent with the public interest, convenience, and necessity.*

I. INTRODUCTION

2 This Order concerns approval of a negotiated interconnection agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC, after Qwest objected to Commission review of a part of the agreement and asserted the Commission lacks jurisdiction to require filing and review of that part of the agreement.

3 The Commission took up this matter at a regularly scheduled Open Meeting held on October 13, 2004, after due and proper notice. The Commission has jurisdiction over the matter pursuant to RCW 80.01.040, Chapter 80.04 RCW, and RCW 80.36.610(1). This decision is permitted and contemplated for a state commission by Section 252(e) of the federal Telecommunications Act of 1996 (Act). 47 U.S.C. § 252(e). The Commission's administrative rules for review and approval of all interconnection agreements under the Act are set forth in WAC 480-04-640.

4 The Commission approved an interconnection agreement between the parties on August 18, 1997, a first amended agreement on December 29, 1999, a second amended agreement on March 28, 2001, a third amended agreement on October 31, 2001, a fourth amended agreement on November 28, 2001, a fifth amended agreement on October 30, 2002, a sixth amended agreement on November 15, 2002, a seventh amended agreement on December 31, 2002, an eighth amended agreement on March 26, 2003, a ninth amended agreement on April 30, 2003, a tenth amended agreement on September 10, 2003, an eleventh amended agreement on March 24, 2004, and a twelfth amended agreement on June 30, 2004. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval.

II. QUESTIONS PRESENTED

5 MCImetro Access Transmission Services, LLC, (MCI) has requested the Commission approve under Section 252(e) the *Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts* (hereafter *Thirteenth Amendment*)¹ and also approve the Qwest Platform

¹ The *Thirteenth Amendment* adds terms and conditions for a batch hot cut process, and stipulates that Qwest will not offer, and MCI will not order, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport as part of the unbundled network element

Plus Master Service Agreement (QPP)² between MCI and Qwest as a part of an interconnection agreement between the two companies.

6 Qwest requests approval of the *Thirteenth Amendment*, but opposes approval of the QPP on the basis that the QPP is not a negotiated interconnection agreement but a “commercial agreement” beyond the jurisdiction of the Commission. Qwest also contends the Commission is preempted from reviewing the QPP.

7 The questions before the Commission are: (1) whether the QPP is part of a negotiated interconnection agreement, and (2) whether the negotiated interconnection agreement is nondiscriminatory, consistent with state and federal law, and consistent with the public interest, convenience, and necessity.

III. POSITIONS OF PARTIES

A. Qwest

8 Qwest asserts that the QPP contains terms for providing switching and shared transport elements that Qwest is no longer required to provide pursuant to Section 251 (as a result of the *USTA II* decision³), but that Qwest is nonetheless required to provide under Section 271(c)(2)(B). Qwest argues that it is therefore not required to file such an agreement with a state commission and the state commission lacks authority under Section 252 to review and approve the

platform out of the existing interconnection agreement or other agreement governed by 47 U.S.C. §§ 251 and 252, and addresses the availability of line splitting.

² The QPP is composed of the “Master Services Agreement,” the “Service Exhibit 1 – Qwest Platform Plus™ Service,” and the “QPP Rate Page – Washington.”

The QPP offers local switching and shared transport for residential and business service, as well as Centrex, payphone access lines, and to serve PBXs. *QPP* ¶ 1.1. Local switching and shared transport are network elements. The QPP is a six-page description of how network elements and associated services will be provided. The “QPP Rate Page – Washington” contains in excess of one hundred separate rates for itemized elements and services.

³ *United States Telecom Ass’n v. Federal Communications Comm’n*, 359 F.3d 554 (D.C. Cir. 2004).

agreement. *Id.* at ¶ 11. It bases its argument, *Id.* at ¶¶ 12-14, on a footnote to the *Qwest Declaratory Order*,⁴ in which the FCC stated (in footnote 26):

We therefore disagree with the parties that advocate the filing of all agreements between an incumbent LEC and a requesting carrier. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America’s suggestion to require Qwest to file with us, under section 211, all agreements with competitive LECs entered into as “settlements of disputes” and publish those terms as “generally available” terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. § 211.

9 Qwest also argues that agreements that make switching and shared transport available are subject to exclusive federal jurisdiction. *Id.* at ¶ 15-20.

B. AT&T

10 AT&T refutes Qwest’s argument that only agreements adopted under Sections 251(b) and (c) of the Act need be filed for Commission approval. AT&T states that the QPP is an “interconnection agreement adopted by negotiation” subject to the filing requirement under Section 252(e)(1) and that Section 252(e)(1) is clear on its face and requires “any” interconnection agreement to be filed. *AT&T Response*, at 3. Further, AT&T states the QPP and the *Thirteenth Amendment* constitute an agreement that creates an “ongoing obligation” and is therefore the type of agreement the FCC requires to be submitted to a state commission. *Id.* at 3-6.

⁴ *In the Matter of Qwest Communications International Inc.’s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (October 4, 2002).

11 AT&T states its concern that if Qwest is not required to file the QPP, then the QPP and similar negotiated agreements will not be examined to determine if they are discriminatory. AT&T takes issue with Qwest's contention that the agreement was not entered into "pursuant to Section 251." AT&T notes that all carriers have a duty to interconnect under Section 251(a)(1) and therefore the QPP is entered into in fulfillment of that Section 251 duty; if Qwest had balked at providing the network elements, MCI could have invoked its right to arbitrate under Section 252. AT&T states that even if that were not true, the QPP is still a negotiated agreement with the meaning of Section 252(a)(1) even if it was negotiated "without regard to the standards in [§ 251(b) and (c).]" *Id. at 8-9.*

12 AT&T also rebuts Qwest's assertion that because Qwest is providing the elements in the QPP pursuant to Section 271(c)(2)(B) and not Section 251(c) it is not required to file the QPP. AT&T points out that under Section 271, Qwest's authority to provide in-region long distance service in Washington is conditioned on Qwest offering competitive checklist items pursuant to "binding agreements that have been approved under section 252 . . ." *Id. at 10-11.* AT&T cites language from a Section 271 application case in which the FCC stated that a Bell Operating Company is only "providing" a checklist item if it has a "concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Id. at 12.*

13 Finally, AT&T points out that other state commissions, namely Texas, Michigan, Ohio, and Kansas have found that such agreements must be filed with state commissions. *Id. at 13-14.*

C. MCI

14 MCI also rebuts Qwest's arguments in opposition to its request for approval. MCI states that the FCC historically has taken a broad view of the Section

252(a)(1) filing requirement and recently has provided, in the *Qwest Declaratory Order*,⁵ a broad definition of what constitutes an interconnection agreement that must be filed pursuant to Section 252(a)(1). *MCI Response at ¶¶ 7-8*. MCI also cites a recent FCC order issued in August of 2004, and a concurring statement by FCC Commissioner Abernathy, for the proposition that the FCC has not settled the issue of whether commercially negotiated agreements for access to network elements that are not required to be unbundled under Section 251(c)(3) should fall within Section 252. *Id. at ¶¶ 9-11*. MCI states that the FCC has left the first determination of what is an interconnection agreement to the states, and in any case, did not address the more general Section 252(e) filing requirement (as opposed to the Section 252(a)(1) filing requirement) in the declaratory ruling on which Qwest relies for its theory. *Id. at ¶¶ 14-15*.

15 MCI points out that the Commission's rule, WAC 480-07-640, requires all agreements that are required to be filed under Section 252 to be filed with and approved by the Commission, including all attachments and appendices. *Id. ¶¶ 16-17*. MCI states that, at a minimum, the QPP is an attachment to the documents that even Qwest agrees constitute an amendment to an interconnection agreement that must be filed with and approved by the Commission. *Id. at ¶ 17*. MCI indicates that if approved, the agreement would be available to other carriers as provided for in Section 252(i). *MCI Metro Request, at 7*.

D. Commission Staff

16 Commission Staff states the QPP is subject to the Section 252 filing requirement because it offers network elements and services that are contemplated by Section

⁵ *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (October 4, 2002).

252 of the Act. *Open Meeting Memo*, at 5. Commission Staff asserts the FCC has never suggested that agreements resulting from commercial negotiations should be regarded as anything other than interconnection agreements. Commission Staff asserts the FCC has stated in several decisions that state commissions are in the best position to determine which agreements must be filed. *Id.* at 5-6. Commission Staff also asserts approval of the QPP, which would permit other carriers to adopt it as an agreement, would provide more certainty to carriers than is provided by Qwest's posting the QPP on Qwest's wholesale website. *Id.* at 6. Commission Staff asserts there is no exception to Section 252(e) filing requirements for negotiated interconnection agreements offering network elements not required to be offered under Section 251(d), or those offered to fulfill Section 271 obligations. *Id.* Commission Staff also contends that filing the QPP is necessary for MCI and Qwest to meet the "completeness" requirement of the Commission's interconnection agreement filing rule, WAC 480-07-640.

- 17 Commission Staff states it has reviewed the QPP and the *Thirteenth Amendment* and determined that they do not discriminate against carriers that are not parties to the agreement, that the QPP and *Thirteenth Amendment* are consistent with state and federal law, and that the QPP and *Thirteenth Amendment* are consistent with the public interest, convenience, and necessity.

IV. COMMISSION DISCUSSION AND DECISION

- 18 The federal Telecommunications Act of 1996 (the Act) states "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." 47 U.S.C. § 252(e)(1). RCW 80.36.610(1) grants the Commission authority "to take actions, conduct proceedings, and enter orders as permitted or contemplated . . . under the federal telecommunications act of 1996."

19 Congress provided state commissions the authority to reject a negotiated interconnection agreement that discriminates against carriers not a party to the agreement, and to reject a negotiated interconnection agreement that is not consistent with the public interest, convenience, and necessity. 47 U.S.C. § 252(e)(2)(A).

20 In its *Qwest Declaratory Order*,⁶ the FCC stated:

Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an “interconnection agreement” and, if so, whether it should be approved or rejected.

21 It is unnecessary for us to decide whether Section 252(a)(1) and (e) would apply to an agreement that pertained solely to the provision of a network element that was not required to be unbundled pursuant to FCC rules implementing sections 251(c), because we conclude that the *Thirteenth Amendment* and the QPP are part of one integrated agreement pertaining to matters that indisputably are subject to the Section 252 filing and approval requirements for negotiated interconnection agreements.

22 Qwest concedes that the *Thirteenth Amendment* is a fully negotiated interconnection agreement. *MCImetro Request for Approval, at 1; Qwest Request for Approval, at 1.*⁷

⁶ *In the Matter of Qwest Communications International Inc.’s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337, ¶ 10 (October 4, 2002).

⁷ Qwest submitted its August 4, 2004, request on a form approved by the Commission. The form states the request is for approval of a “fully negotiated amendment to an interconnection agreement.”

23 Both the *Thirteenth Amendment* and the QPP state that Qwest and MCI contemporaneously entered into the QPP and the *Thirteenth Amendment* to provide MCI with “services technically and functionally equivalent” to the unbundled network element platform (UNE-P) arrangements as they existed under the companies’ interconnection agreements on June 14, 2004 (just prior to the expiration of the *USTA II* court’s stay of its vacatur of the FCC’s unbundling rules for switching and dedicated transport). *Qwest Master Services Agreement, at 2 (recitals); Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, at 1 (recitals)*.

24 As explained by the *Thirteenth Amendment* and the QPP themselves, the combination of network elements commonly known as UNE-P includes not only the port, switching and transport elements, but also the local loop, *Id.*, which incumbent local exchange carriers are still required to provide on an unbundled basis pursuant to FCC rules that implement Section 251(c). *See 47 C.F.R. § 51.319(a)(1)*. There is no dispute that ongoing obligations pertaining to an ILEC’s provision of the local loop element are subject to state commission review and approval under Section 252(e).

25 The whole purpose of the QPP is to provide the port, switching, and shared transport elements *in combination with* the local loop element, which is provided under Qwest’s existing interconnection agreement with MCI. According to the Service Exhibit 1 to the Qwest Master Services Agreement, Qwest:

QPP™ services shall consist of the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest Switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable

interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, "ICAs") as the same existed on June 14, 2004.

* * *

As part of the QPP™ service, Qwest shall combine the Network Elements that make up the QPP™ service with Analog/Digital Capable Loops, with such Loops (including services such as line splitting) being provided pursuant to the rates, terms and conditions of the MCI's ICAs as described below.

* * *

The Loop will be provided by Qwest under the applicable ICAs in effect between Qwest and MCI at the time the order is placed. As part of the QPP™ Service, Qwest shall as described below combine the Local Switching and Shared Transport Network Elements with the Loop provided pursuant to the terms and conditions of MCI's ICAs.

Service Exhibit 1-Qwest Platform Plus Service, Sec. 1.1, 1.2.

- 26 There can be no serious question that the ongoing obligations concerning rates, terms and conditions for the provision of network elements in the *Thirteenth Amendment* and the QPP are part of a single integrated, non-severable agreement. The Qwest Master Services Agreement at Section 23 provides that:

In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision of this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement.

27 The Joint Request also reflects integrated pricing in combination of the two agreements, which have to be considered together in order for one to understand the entire agreement between the two parties. This integrated pricing also makes it apparent that the bargain struck by the parties encompasses both the QPP and the *Thirteenth Amendment*.

28 In addition to addressing line splitting, and striking certain network elements from the existing interconnection agreement, the *Thirteenth Amendment* provides for a batch hot cut process. An important function of a batch hot cut process is to enable migration of CLEC customers from service provided over UNE-P to service that is provided over the CLEC's own switch but still using the ILEC's loop. Under the QPP, the recurring charge for the port element is to increase each year—but only if Qwest meets its obligations related to implementation of a batch hot cut process under the *Thirteenth Amendment*. The QPP states:

Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to MCI's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™ Port Rate Increases for that state will not go into effect until such time as Qwest is able to process Batch Hot Cut orders in that state, and in the event of any such delay in the effective date of the QPP™ Port Rate increases, there shall be no subsequent true up of the QPP™ Port Rate Increases.

29 Thus, the *Thirteenth Amendment* and the QPP represent an integrated combination of rates, terms and conditions for the provision of a combination of unbundled network elements, which must be taken together in order for one to understand the entirety of the interconnection agreement between the two

parties. In order to determine whether the *Thirteenth Amendment* discriminates against other parties and whether it is in the public interest, it is critical to have the entirety of the agreement before us. Only then can we understand how Qwest treats its wholesale customers for local interconnection. Also, because the *Thirteenth Amendment* and the QPP must be read together to understand the entirety of the amended interconnection agreement, it is clear that the QPP is an interconnection agreement subject to the filing, approval, and adoption requirements under Section 252 of the Act.

30 One provision of the QPP in particular demonstrates the danger to the Act's anti-discrimination policy if we were to accept Qwest's theory that filing and approval requirements apply only to select portions of interconnection agreements that pertain to Section 251(c) network elements. Although the QPP provides that the loop element will be provided pursuant to MCI's interconnection agreements with Qwest at the rates set forth in those agreements,

[t]o the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state . . . remains constant.

Service Exhibit 1-Qwest Platform Plus Service, Sec. 3.2.

31 Thus, the terms of the agreement ensure that, as between these two parties, a change in the loop rate or in the pricing zone designations by this Commission will be offset by a commensurate increase or decrease in the charges that will apply under the purportedly separate QPP agreement. By this device (and there are undoubtedly countless mechanisms that an ILEC and a favored CLEC might

potentially employ to similar ends⁸) the parties have bargained a different price for a Section 251 element than would apply to another CLEC that is not a party to the QPP and which lacks the right to opt-in to the integrated *Thirteenth Amendment* and QPP under Section 251(i).

32 As the court held in *Sage v. P.U.C. of Texas*,⁹ “If the parties were permitted to file for approval on only those portions of the integrated agreement that they deem relevant to § 251 obligations, the disclosed terms of the filed sub-agreements might fundamentally misrepresent the negotiated understanding of what the parties agreed.” That is the case with the *Thirteenth Amendment*. Accordingly, we find that the QPP is part of the negotiated interconnection agreement between MCI and Qwest. Because the QPP is part of the negotiated interconnection agreement, it is subject to our jurisdiction and to our review. 47 *U.S.C. 252(e)*.

⁸ As the court stated in *Sage Telecom, LP v. Public Util. Comm’n of Texas*, Case No. A-04-CA-364-SS, at 11-12 (W.D. Tex. Oct. 7, 2004), in rejecting a similar argument by Southwestern Bell:

For instance, during the give-and-take process of a negotiation for an integrated agreement, an ILEC might offer § 251 unbundled network elements at a higher or lower price depending on the price it obtained for providing non-§ 251 services. Similarly, the parties might agree that either of them would make a balloon payment which, although not tied to the provision of any particular service or element in the comprehensive agreement, would necessarily impact the real price allocable to any one of the elements or services under contract.

Without access to all terms and conditions, the PUC could make no adequate determination of whether the provisions fulfilling § 251 duties are discriminatory or otherwise not in the public interest. For example, while the state terms of a publicly filed sub-agreement might make it appear that a CLEC is getting a merely average deal from an ILEC, an undisclosed balloon payment to the CLEC might make the deal substantially superior to the deals made available to other CLECs. Lacking knowledge of the balloon payment, neither the State commission nor the other CLECs would have any hope of taking enforcement action to prevent such discrimination.

⁹ *Id.* at 11.

A. Approval of Negotiated Interconnection Agreement

1. Procedure

33 Our procedure for review and approval of negotiated interconnection
agreements is that we will consider a request at a regularly or specially
scheduled open public meeting. *WAC 480-07-640(2)(b)*. We may hear oral
argument from parties, from members of the public, or both. *Id.* The
Commission will enter an order approving or rejecting a fully negotiated
agreement within ninety days after the date on which the request for approval
and interconnection agreement are filed. *Id.* This procedure is authorized by the
Act. *47 U.S.C. § 252(e)(3) and (4)*.

2. Standard of Approval

34 The standard of approval is that we must approve a request unless the
agreement or a portion of it discriminates against a telecommunications carrier
not a party to the agreement, or unless the agreement or a portion of it is not
consistent with the public interest, convenience, and necessity. *47 U.S.C. §*
252(e)(2). The Commission has added, consistent with the Act, a requirement
that agreements be consistent with state and federal law. *WAC 480-07-*
640(2)(a)(i); 47 U.S.C. § 252(e)(3).

**3. MCI Filed a Complete Agreement that Is Not Discriminatory, Is
Consistent with State and Federal Law, and Is Consistent with the
Public Interest, Convenience, and Necessity.**

35 MCI and Qwest each assert the *Thirteenth Amendment* is not discriminatory and is
consistent with the public interest. MCI asserts the same for the QPP. *Open*
Meeting Memo, at 5-6. Commission Staff states it has reviewed the *Thirteenth*
Amendment and the three QPP documents and determined they do not contain

terms, conditions, or prices that discriminate against any other carrier; determined they are consistent with state and federal law; and also determined they are consistent with the public interest, convenience, and necessity. *Id. at 6.* On the record before us, we conclude the negotiated interconnection agreement (the *Thirteenth Amendment* together with the QPP) must be approved consistent with 47 U.S.C. § 252(e) and WAC 480-07-640. Accordingly, we grant the request of MCI and approve the negotiated interconnection agreement filed by MCI on July 29, 2004, in Docket No. UT-960310. Other carriers may adopt the negotiated interconnection agreement. 47 U.S.C. § 252(i).

V. FINDINGS OF FACT

- 36 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact.
- 37 (1) The QPP is composed of the “Master Services Agreement,” the “Service Exhibit 1 –Qwest Platform Plus™ Service,” and the “QPP Rate Page – Washington.”
- 38 (2) MCImetro Access Transmission Services, LLC requested approval of the *Thirteenth Amendment* to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation, and requested approval of the QPP on July 29, 2004.
- 39 (3) Qwest Corporation objected to MCImetro Access Transmission Services, LLC’s request for approval of the QPP and asserted the Commission lacks jurisdiction to review the QPP on August 4, 2004.
- 40 (4) The *Thirteenth Amendment* and the QPP together constitute a negotiated interconnection agreement.

41 (5) The *Thirteenth Amendment* and the QPP do not discriminate against any carrier not a party to the agreement.

42 (6) The *Thirteenth Amendment* and the QPP are consistent with state and federal law.

43 (7) The *Thirteenth Amendment* and the QPP are consistent with the public interest, convenience, and necessity.

VI. CONCLUSIONS OF LAW

44 (1) The Commission has jurisdiction over the subject matter of the request of MCImetro Access Transmission Services, LLC and negotiated interconnection agreements.

45 (2) The Commission is not required by the Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to approving a negotiated interconnection agreement in its entirety.

46 (3) Commission approval of the QPP is permitted and contemplated for a state commission by Section 252 of the federal Telecommunications Act of 1996.

47 (4) A complete agreement is filed with the Commission when all documents containing terms, conditions, and rates (prices) that apply to provision of any network element, service, or other item or activity related to interconnection are filed.

- 48 (5) Commission approval of the *Thirteenth Amendment* and the QPP will not result in discrimination against any telecommunications carrier that is not a party to the agreement.
- 49 (6) Commission approval of the *Thirteenth Amendment* and the QPP is consistent with state and federal law.
- 50 (7) Commission approval of the *Thirteenth Amendment* and the QPP is consistent with the public interest, convenience, and necessity.

VII. ORDER

51 This order decides issues in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

- 52 (1) The Commission grants the request of MCImetro Access Transmission Services, LLC for review and approval of the QPP negotiated between MCImetro Access Transmission Services, LLC and Qwest Corporation.
- 53 (2) The Commission grants the request of MCImetro Access Transmission Services, LLC for review and approval of the *Thirteenth Amendment* to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation.
- 54 (3) In the event that the parties revise, modify, or amend the agreement approved in this Order, the revised, modified, or amended agreement will be deemed to be a new agreement under the Act and must be submitted to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant provisions of state law, prior to taking effect.

- 55 (4) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the *Thirteenth Amendment* to the Agreement, including the QPP, between MCImetro Access Transmission Services, LLC and Qwest Corporation. The *Thirteenth Amendment*, including the QPP, is subject to the jurisdiction of the Commission.

DATED at Olympia, Washington, and effective this 20th day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

EXHIBIT 2:

**QWEST LETTER AND EMAILS REGARDING UNAVAILABILITY OF QPP
AFTER JANUARY 31, 2005**

January 4, 2005

Bonnie Johnson
Eschelon Telecom Inc.
730 2nd Avenue South - Suite 900
Minneapolis, MN 55402
bjjohnson@eschelon.com

TO:Bonnie Johnson

Announcement Date: January 4, 2005
Effective Date: Immediately
Document Number: PROD.01.04.05.A.001277.QPP_MSA_Available
Notification Category: Product Notification
Target Audience: CLECs
Subject: **Qwest Platform Plus™ (QPP™) Master Services Agreement (MSA) Availability**

This notification is part of Qwest's continuing effort to keep you informed of the availability of Qwest wholesale products in the changing regulatory environment. During the period of the TRO rulemaking and the *USTA II* decision, Qwest and the CLEC community jointly developed a UNE-P replacement product. **Qwest Platform Plus™ (QPP™)** was the first commercially negotiated, market-based rate agreement between a Bell Operating Company and a major CLEC and demonstrated the ability of Qwest and CLECs to develop mutually beneficial, commercially acceptable contractual arrangements for the continued availability of a finished service platform product. Many CLECs have already joined Qwest in signing **QPP™ Master Services Agreements (MSAs) which** provide wholesale pricing continuity and certainty about the availability of services.

On December 15, 2004, in recognition of the highly competitive telecommunications landscape, the FCC adopted a new framework ("TRO Remand") concerning network unbundling obligations which signals the eventual elimination of the requirement for Qwest to make available Mass-Market Local Switching, including UNE-P services to requesting CLECs. The FCC's anticipated action and forthcoming order, however, does not alter Qwest's current offering of a functionally equivalent UNE-P replacement product.

In the spirit of continued cooperation with our CLEC partners, Qwest is pleased to announce that QPP™ MSAs are available for signature until January 31, 2005 at the same terms, conditions and rates provided to date. Qwest must receive executed agreements on or before January 31, 2005. After this date, Qwest may withdraw or modify the QPP™ offering, so any CLEC wishing to take advantage of QPP™ as it is presently offered should act immediately.

For ease of reference, you will find attached to this notice 'Service Exhibit 1 - Qwest Platform Plus™ (QPP™)' which, in section 3.9, includes an extended period for you to identify residential end users to obtain residential end user rates.

If you are ready to enter into a QPP™ commercial arrangement with Qwest, the following information posted to Qwest Web sites are available:

- The Interconnection Agreement Amendment can be located here:
<http://www.qwest.com/wholesale/clecs/amendments.html>
- The remaining sections of the QPP™ MSA can be located here:
<http://www.qwest.com/wholesale/clecs/commercialagreements.html>
- The QPP™ General Information PCAT can be located here:
<http://www.qwest.com/wholesale/pcat/qppgeneral.html>

Remember, the current QPP™ terms, conditions, and pricing are available for signature until January 31, 2005 only, and agreements must be received by Qwest by that date.

If you have any questions or concerns, please contact your Qwest Service Manager, Joshua Nielsen on (801) 239-5335.

Sincerely,

Qwest Communications

Note: The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process. Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you would like to unsubscribe to mailouts please go to the ?Subscribe/Unsubscribe? web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

cc: Coleen Austin
Joshua Nielsen
Qwest Communications 1600 7th Ave Room 1806 Seattle WA 98008

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

From: Christensen, Larry [SMTP:Larry.Christensen@qwest.com]
Sent: Friday, January 14, 2005 11:29 AM
To: Clauson, Karen L.
Cc: Dinwiddie, Clifford .; Hsiao, Doug; Novak, Jean; Campbell, Bill; Miles, Linda; Bastiampillai, Harisha; Diane Wells; Denney, Douglas K.; Olson, Joan M.; Johnson, Bonnie J.; Zeller, Ginny A.; Oxley, J. Jeffery
Subject: RE: WA MCI-Qwest agreement

Karen,

I have been pushing to respond asap and hope to respond to the MCI opt-in request today.

With respect to your questions about Jean Novak's response to Bill Markert's questions, he is correct that Qwest will not allow CLECs to order QPP for new ordering while providing for the transition period of the embedded base set by the FCC. Also, Bill is correct that the current QPP terms and conditions are only available until January 31 and will be withdrawn after that date. Qwest is reviewing its options concerning making a follow-up offering available after January 31, but, given the operational issues, it safe to assume that if there is an offering, it is unlikely to have the same terms and conditions of the current QPP offering.

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

From: Christensen, Larry [SMTP:Larry.Christensen@qwest.com]
Sent: Tuesday, January 18, 2005 1:05 PM
To: Clauson, Karen L.
Cc: Dinwiddie, Clifford .; Hsiao, Doug; Novak, Jean; Campbell, Bill; Miles, Linda; Bastiampillai, Harisha; Denney, Douglas K.; Olson, Joan M.; Johnson, Bonnie J.; Zeller, Ginny A.; Oxley, J. Jeffery; Hammack, Carolyn; Snyder, Tom
Subject: QPP

Karen

Qwest is aware of this order but does not believe that its position is inconsistent with section 252(i) or this WUTC precedent. The Qwest policy not to allow carriers to opt-in to expired agreements is based primarily on the fact that it need only offer an agreement/amendment for a reasonable period of time. Qwest considers agreements that have extended past their initial contract term to be well past a reasonable period of time. Consequently Qwest requests carriers to review agreements yet to expire when they consider opting-in to an agreement. Qwest believes that its position is consistent with the WUTC Interpretative and Policy Statement concerning Section 252(i).

Up until last week, Eschelon has never requested or elected to opt-in to the MCI agreement, an agreement that is more than five years old and predates Eschelon's original ICA. Since Eschelon and Qwest have been in negotiations for a new agreement for a very long period of time, and Eschelon has made no previous request to opt-in to the MCI ICA and since your emails seem to indicate that you have not reviewed the entire MCI ICA, Qwest can only assume that Eschelon is only interested in the QPP portion of that agreement. Qwest is offering the current QPP Agreement until January 31, 2005. Qwest is willing to discuss those commercial terms and conditions with Eschelon at any time. However, those discussions must be completed by January 31, 2005, with an executed agreement or Qwest may defer further discussions until a later date.

Because of Eschelon's unique situation with both UNE-P and UNE-E, we have prepared and attached an MSA and Amendment that addresses the conversion of both platform services to QPP.

I stand willing to set up a conference call to discuss Eschelon's QPP.