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July 12, 2006

RECEIVED

JUL 13 2006

Public Utility Commission of Oregon
Administrative Hearing Division

Annette Taylor
Oregon Public Utility Commission
550 Capitol Street, NE
Suite 215
Salem, Oregon 97301

Confidential Material
to Locked Cabinet
Env. # 502(12)

HARD COPY OF ELECTRONIC
DOCUMENT(S) RECEIVED

7-12-06

Re: UM 1251

Dear Ms. Taylor:

Enclosed for filing please find an original and (5) copies of Joint CLECs Motion for Leave to Submit Prefiled Testimony and Exhibits and Surrebuttal Testimony of Douglas Denney.

Highly Confidential and *Confidential* Exhibits and Testimony pages are sealed in separate envelopes.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

Davis Wright Tremaine LLP

Mark P. Trinchero

MPT/djr
Enclosures

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JUL 13 2006

**BEFORE THE
PUBLIC UTILITY COMMISSION
OF OREGON**

Public Utility Commission of Oregon
Administrative Hearing Division

UM 1251

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DOCUMENT(S) RECEIVED

7-12-06

In the Matter of

COVAD COMMUNICATIONS
COMPANY, ESCHELON TELECOM OF
OREGON, INC., INTEGRA TELECOM
OF OREGON, INC., McLEODUSA
TELECOMMUNICATIONS SERVICES,
INC., AND XO COMMUNICATIONS
SERVICES, INC.

MOTION FOR LEAVE TO SUBMIT
PREFILED SURREBUTTAL
TESTIMONY AND EXHIBITS

Request for Commission Approval of Non-
Impairment Wire Center List

MOTION

Covad Communications Company, Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., McLEODUSA Telecommunications Services, Inc. and XO Communications Services, Inc. (hereinafter "Joint CLECs") hereby move for leave to prefile the attached Surrebittal Testimony of Douglas Denny, and related exhibits in this docket. In support of this motion Joint CLECs state as follows:

BACKGROUND

Pursuant to the procedural schedule adopted in this proceeding Qwest Communications, Inc. ("Qwest") filed written direct testimony on April 21, 2006, Joint CLECs filed written

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rebuttal testimony on May 19, 2006, and Qwest filed written reply testimony on 16, 2006. Joint CLECs received Qwest's reply testimony on June 20, 2006. There are two issues in Qwest's reply testimony that warrant surrebuttal and which are addressed in the attached prefiled surrebuttal testimony and exhibits of Douglas Denny sponsored on behalf of Joint CLECs.

ISSUE 1: THE BANKRUPT COLLOCATOR

The first issue relates to a dispute between the parties regarding the proper designation of Qwest's Medford wire center. In its direct testimony, Qwest claimed that the Medford wire center should be designated Tier 1 because there were purportedly four fiber-based collocators in the Medford central office, despite the fact that one of these four collocators was in bankruptcy.¹ Joint CLECs argued that a bankrupt collocator should not be included in determining the proper designation of a wire center.² In its reply testimony, Qwest failed to address specifically how it had "verified" that its inclusion of this admittedly bankrupt carrier was appropriate in determining the *TRRO* designation for the Medford wire center. Joint CLECs were, therefore, compelled to investigate further and were able to track down the former sole shareholder and President of the bankrupt company. This individual was able to confirm that his company was in fact in Chapter 7 bankruptcy prior to March 11, 2005 (the effective date of the *TRRO*) and that it had transferred 99 percent of its customer base to an alternative carrier prior to that date. This newly discovered information³ is discussed in detail in the attached surrebuttal testimony and exhibits and is directly relevant to the issue in dispute between the parties.

¹ See Highly Confidential Qwest/10, Torrence/1; see also Highly Confidential Qwest/11, Torrence/1.

² See Joint CLECs/1, Denney/11-12.

³ The information has been designated Highly Confidential as it would disclose where an individual company had collocated equipment, a topic which has been treated as Highly Confidential by all parties to this proceeding.

Joint CLEC's shared this information with Qwest, including a draft declaration from the former sole shareholder and President of the bankrupt company, prior to filing this motion and attached surrebuttal testimony. Joint CLECs have no objection if Qwest requests an opportunity to respond to the surrebuttal testimony.

ISSUE 2: MISCHARACTERIZATION OF THE CALIFORNIA TRRO CASE

Another issue in dispute between Qwest and Joint CLECs is the appropriate "vintage" access line count data that should be used in making determinations in this proceeding. Qwest argues that the 2003 ARMIS data that it has supplied is sufficient, while Joint CLECs argue that the 2004 data should be used.⁴ In support of Qwest's reliance on the older data, Mr. Brigham's reply testimony states that the California Public Utilities Commission had approved SBC's (aka AT&T) wire center non-impairment lists based on December 2003 access line data. This statement is factually incorrect. The attached surrebuttal testimony addresses this point in detail. As noted in that testimony, On June 12, 2006, the Administrative Law Judge in the California *TRRO* proceeding orally granted a motion to compel AT&T (fka SBC) to provide the parties in that proceeding with updated December 2004 access line data. Joint CLECs respectfully request that this surrebuttal testimony be admitted to correct this mischaracterization of the California proceeding.

CONCLUSION

For the foregoing reasons, Joint CLECs move the Commission to permit the filing of the attached surrebuttal testimony and exhibits. The surrebuttal testimony introduces new evidence not previously available to Joint CLECs which both clarify and correct the existing record in this

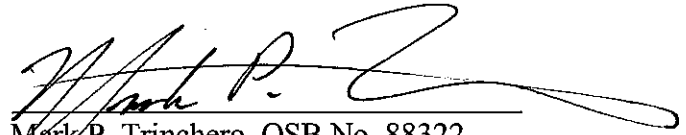
⁴ See Joint CLECs/1, Denney/15-16 and Qwest/14, Brigham/5.

proceeding. No other parties to the proceeding are harmed by the introduction of this testimony. As noted above, Joint CLECs will not object if Qwest requests an opportunity to respond to the two issues raised in the attached surrebuttal testimony.

Respectfully submitted this 12th day of July, 2006.

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By:



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