

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.

1. PARTIES	<i>Requesting Carrier</i>	<i>Affected Carrier</i>	
Name:	<u>Ernest Communications, Inc.</u>	<u>Qwest Corporation</u>	<u>Don Mason</u>
Address:	<u>6475 Jimmy Carter Blvd. ste. 300</u> <u>Norcross, GA 30071</u>	<u>Director-Interconnect</u> <u>1801 California St., Ste. 2401</u> <u>Denver, CO 80202</u>	<u>Qwest Corporation</u> <u>421 S.W. Oak, Ste. 810</u> <u>Portland, OR 97204</u>

2. PRIMARY CONTACT PERSON FOR PROCESSING INFORMATION:

Name: Jamaica L. Wilson Phone: (503) 727-2081
Address: Perkins Coie LLP Fax: (503) 727-2222
1211 S.W. Fifth Avenue, Suite 1500 E-Mail: jamaicawilson@perkinscoie.com
Portland, OR 97204

3. TYPE OF FILING (Check all that apply. For example, parties seeking to adopt a previously approved agreement with new negotiated amendments should check both "Adoption" and "Amendment" categories.)

Adoption: Adopts interconnection agreement previously approved by the Commission.
Parties to prior agreement _____ & _____
Approved in Docket ARB _____, Order No(s). _____

Does filing adopt amendments to base agreement previously approved by the Commission?

NO

YES, approved in Docket ARB _____, Order No(s). _____

New Agreement: Seeks approval of new negotiated agreement.

Does this filing replace an agreement between the same parties that was previously approved by the Commission?

NO

YES, approved in Docket ARB _____, Order No(s). _____

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

If the original agreement was negotiated, has it been approved by Commission?

NO, decision pending in Docket ARB _____

YES, approved in Docket ARB 105, (1),(2), Order No(s). 98-497,00-426, 01-938

If original agreement was an adoption, what was its docket number? Docket ARB 6

Other: Please explain.

October 3, 2002

VIA EMAIL, FACSIMILE, AND U.S. MAIL

Ms. Cherie Powers
Administrative Specialist
Oregon Public Utility Commission
Suite 215
550 Capitol Street NE
Salem, OR 97301-2551

**Re: Proof of Service of Materials Filed on September 4, 2002 in
Docket ARB 105**

EXPEDITED TREATMENT REQUESTED

Dear Ms. Powers:

This letter is to advise you that on October 1, 2002, I served the materials that Qwest filed on September 4, 2002 in this docket (checklist, cover letter, and amendment to the interconnection agreement) on the CLEC's representative, as you requested. I filed the proof of service with the Commission that day. Today you advised me that the proof of service and cover letter noted that the filing was made in Docket ARB 6, when the correct docket number is ARB 105. Attached is a revised certificate of service showing Docket ARB 105, which demonstrates that service was completed on October 1, 2002.

The materials sent to the CLEC on October 1 did not constitute the first communication Qwest has had with this CLEC regarding this issue. As we discussed on September 30, 2002, Qwest previously communicated with the CLEC regarding the filing of this agreement in other states. On August 22, 2002, Qwest sent the CLEC a letter notifying the CLEC that this agreement would be publicly filed in other jurisdictions and posted on the Qwest wholesale Web site for review by any interested parties. The CLEC was provided with an opportunity to object to that filing and posting. Qwest also followed up with telephone calls to the CLEC. The CLEC has not objected to either the public filing of the amendment or the corresponding publication of the agreement on Qwest's wholesale Web site.

Ms. Cherie Powers
October 3, 2002
Page 2

Given that Qwest has completed service as you requested, I trust that you will now post the materials to the Commission's Web site to provide the public notice of the filing as described in OAR 860-016-0020. Qwest expected the posting and notice to occur on September 4, the date of filing. Qwest did not receive any indication that the Commission did not post the materials to the Commission's Web site until September 24, 2002, twenty days after the filing. Given that Qwest did not receive timely notice of the purported deficiencies in the filings, and that the CLEC has already received adequate prior notice of the filing of this agreement in other jurisdictions without voicing an objection, **Qwest requests that the Commission establish a 14-day time period for public comment, as permitted by OAR 860-016-0020(5).**

Thank you for your attention to this matter. If you have any questions, please contact me or Larry Reichman immediately.

Very truly yours,

Jay Nusbaum

JPN:kh

Cc: Paul Masters, Ernest Communications, Inc.
Jeff Smock, Ernest Communications, Inc.
Todd Lundy
Alex Duarte
Don Mason
Larry Reichman

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CERTIFICATE OF SERVICE

ARB 105

I hereby certify that on October 1, 2002 I served the foregoing **Carrier-to-Carrier Agreement Checklist, Confidential Settlement Agreement and Release, and Cover Letter**, which Qwest filed with the Public Utility Commission of Oregon on September 4, 2002, on the following persons by causing to be mailed a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said persons at the following addresses and deposited in the post office at Portland, Oregon on this day:

Paul Masters
Ernest Communications, Inc.
6475 Jimmy Carter Blvd., Suite 300
Norcross, GA 30342

Jeff Smock
Ernest Communications, Inc.
6475 Jimmy Carter Blvd., Suite 300
Norcross, GA 30342

DATED: October 3, 2002.

PERKINS COIE LLP

By _____
Lawrence Reichman, OSB No. 86083
Jay P. Nusbaum, OSB No. 96378

Attorneys for Qwest Corporation

Jay Nusbaum
PHONE: 503.727.2025
EMAIL: nusbj@perkinscoie.com

September 4, 2002

VIA HAND DELIVERY

Ms. Cherie Powers
Oregon Public Utility Commission
Suite 215
550 Capitol Street NE
Salem, OR 97310

**Re: Public Utility Commission of Oregon Docket ARB 105,
Confidential Settlement Agreement and Release between Qwest
Corporation and Ernest Communications, Inc.**

Dear Ms. Powers:

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest Corporation ("Qwest") hereby submits three copies of the enclosed fully executed negotiated agreement, Confidential Settlement Agreement and Release between Qwest Corporation and Ernest Communications, Inc., for filing with and approval by the Commission. Given the multi-state nature of this Agreement, the original is not available for filing. Also enclosed is a completed Carrier-to-Carrier Agreement Checklist, which includes the names of the parties, a contact person, and the type of filing. The electronic version was electronically filed on September 4, 2002.

Qwest has previously submitted hundreds of agreements with CLECs in Oregon for approval by the Commission under Section 252(e)(2). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252.

September 4, 2002

Page 2

Earlier this year, questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. Qwest promptly brought this matter to the Commission's attention in a letter dated March 11, 2002, including providing copies of our answer to the DOC complaint, and copies of those of the 11 identified agreements that also had applicability in Oregon. Qwest invited the Commission to review the agreements for itself. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission the pertinent interconnection agreements and amendments, and is committed to full compliance with the Act. As a further demonstration of our good faith, after this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 9, 2002. Under this policy, Qwest is broadly filing all contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that commitment goes well beyond the requirements of Section 252(a). For example, it reaches details of business-to-business carrier relations that Qwest does not think the Communications Act requires to be filed with state commissions for approval. However, we are committed to follow this standard until the FCC issues a decision on the appropriate line-drawing in this area. Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.

Older agreements provide a more complicated case. Qwest naturally has been concerned about second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of its good faith. Specifically, Qwest has reviewed all of our currently effective agreements with CLECs in Oregon that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, Commission order, or otherwise. Qwest has applied its broad new review standard to all such agreements and provided them here.

September 4, 2002

Page 3

Qwest is petitioning the Commission to approve the attached agreement such that, to the extent any active provisions of such agreement relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). For the Commission's benefit, Qwest has marked, highlighted or bracketed those terms and provisions in the agreement which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, Commission order, or otherwise, and are thus subject to filing and approval under Section 252. We are not asking the Commission to decide whether this agreement, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The Commission need simply approve those provisions relating to Section 251(b) or (c) services under its Section 252(e) procedures, and Qwest will make the going forward provisions related to Section 251(b) or (c) available under Section 251(i). Thus, the Commission does not at this time need to reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not.

As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling, call-related databases, and operator or directory services. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Qwest can provide examples of routine paperwork, order documents, or form contracts for the Commission's review.

Qwest realizes that this voluntary decision to submit the attached agreements does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith. In any event, Qwest's actions here remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

Qwest requests that the Commission approve the agreement as soon as reasonably practicable. Qwest reserves its rights to demonstrate that this agreement need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). Provisions that settle past carrier-specific disputes, that do not relate to

September 4, 2002

Page 4

Section 251, or that are no longer in effect are not subject to Section 251(i) and this offering.

As a further sign of good faith, Qwest will also be posting this agreement on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Oregon of the interconnection-related terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the agreement filed here.

Given the confidentiality provisions contained in some of the agreements filed by Qwest and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

Thank you for your attention to this matter.

Sincerely yours,

Jay Nusbaum

JPN:jpn
Enclosure

Cc: Don Mason
Alex Duarte
Todd Lundy
Larry Reichman

I. PURPOSE

This Confidential Settlement Agreement and Release ("Agreement") is entered into between Qwest Corporation, on behalf of itself and its subsidiaries, affiliated companies, directors, officers, employees, and shareholders (collectively "Qwest"), and Ernest Communications, Inc., on behalf of itself and its subsidiaries, affiliated companies, directors, officers, employees, and shareholders (collectively "Ernest"), to effect a complete and final settlement of all of Ernest's claims or causes of action related to its request on February 16, 2001 of the Federal Communications Commission (the "Commission") for Accelerated Docket treatment of Ernest's dispute with Qwest concerning the provision of the unbundled network element platform ("UNE-P") for lines serving payphones.

II. RECITALS

A. In November of 1998, the parties entered into interconnection agreements under 47 U.S.C. § 252 in the states of Arizona, Colorado, Oregon, and Washington. Each of these agreements later became effective upon approval by the respective state commissions in those states.

B. Following the Commission's issuance of its decision in *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, FCC 99-266 (rel. Nov. 5, 1999) ("*UNE Remand Order*"), the parties amended their interconnection agreements to specify that Qwest is generally obligated to provide UNE-P to Ernest.

C. Ernest and Qwest disputed the rights and obligations of each with respect to Ernest's request that Qwest provide UNE-P for lines serving payphones (the "Disputes").

D. After discussions between the parties, the parties could not reach an agreement concerning the Disputes.

E. Ernest subsequently requested, by a letter filed February 16, 2001, that the Commission resolve the Disputes through the Commission's Accelerated Docket process.

F. Without resort to further litigation of any nature, the parties desire to confidentially settle the Disputes, including all claims arising out of the Disputes that Ernest raised or could have raised through the date of this Agreement.

G. The Parties agree that this Agreement is entered to resolve past Disputes and, in significant part, based on Ernest's customer profile.

III. TERMS

A. **Payment to Ernest.** Qwest will wire to Ernest a payment of [REDACTED] (the "Payment") within five business days after execution of the Agreement.



B. Provision of UNE-P for Lines Serving Payphones. Qwest will, as of September 1, 2001 and consistent with its UNE-P PAL product offering, accept orders from Ernest for payphone access lines, including orders to convert Ernest's current base of resold payphone lines to UNE-P PAL. Ernest agrees to follow Qwest's processes for submitting orders for UNE-P PAL including paying all applicable recurring and non-recurring charges for such services.

C. Dismissal of Complaint. Within two business days of receipt of the Payment, Ernest will withdraw its February 16, 2001 Accelerated Docket request with prejudice, in a form mutually agreeable to both parties, and provide a copy of such withdrawal to Qwest.

D. Release of Claims. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby release, forego, and forever discharge each other and their respective associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies, and attorneys, from any and all claims, demands, actions, causes, causes of action, suits, appeals, petitions, oppositions, statements, debts, liens, contracts, agreements, promises, liability, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, whether those be in law, under statute, or in equity, fixed or contingent, past and present, known or unknown, asserted, or which could have been asserted by either Party arising out of or related to the Disputes, through the date of this Agreement.

E. Use of UNE-P by Non-CLEC Affiliated Payphone Service Providers. Ernest agrees that it will not furnish payphone service through UNE-P to any affiliated payphone service provider entity. For the purposes of this Section E, an affiliated payphone service provider entity is any entity providing service to payphone providers that is controlled by, controls, or is under common control with, Ernest.

F. Compromise. This Agreement is made for settlement purposes only. The terms in this Agreement are the result of compromise and negotiation by both Parties of positions which they held and continue to hold. Nothing in this Agreement, including the fact that it was entered into by the Parties, shall constitute, or be construed as, an admission on behalf of any of the Parties as to the validity of any claims, defenses, or allegations made in connection with this Dispute. No precedential effect or other significance except as may be necessary to enforce this Agreement, shall attach to any principle or methodology contained in this Agreement.

G. Confidentiality. The Parties and their respective attorneys and agents expressly agree that they will keep the substance of the negotiations and/or conditions of the settlement and the terms or substance of this Agreement strictly confidential, except to the extent that such disclosure is required by law or is necessary to enforce the Agreement. The Parties further agree that, unless compelled to do so by law, they will not communicate (either orally or in writing)

or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial, or administrative agency or body, business, entity, or association, or anyone else for any reason whatsoever, without the prior express written consent of the other Party. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties further agree that this Agreement and negotiations, and all disputes related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at both the state and federal level. Finally, in the event either Party has a legal obligation that requires disclosure of the terms and conditions of this Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope, and source of such obligations, so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement.

H. Dispute Resolution. Any claim, controversy or dispute arising out of this Agreement, whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, between or among the parties or their officers, directors or employees shall be resolved by arbitration. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all claims. A single arbitrator engaged in the practice of law shall conduct the arbitration under the then-current rules of the American Arbitration Association. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing party, as determined by the arbitrator, shall be entitled to an award of reasonable attorneys' fees and costs. The laws of the State of Colorado shall govern the construction and interpretation of this Agreement and the arbitration shall occur in the State of Colorado. It is expressly agreed that either party may seek injunctive relief or specific performance of the obligations hereunder in an appropriate court of law or equity pending an award in arbitration.

I. Binding. This Agreement shall inure to and bind the parties hereto, their respective legal representatives, successors, assigns, affiliates, shareholders, officers, directors, employees, principals, agents, and underwriters.

J. Authorization to Execute this Agreement. The undersigned, by their execution of this Agreement, represent that they are duly authorized to enter into this Agreement on behalf of Ernest and Qwest, respectively, and that their signatures to this Agreement bind their respective principals to the terms of this Agreement.

K. Counterparts. This Agreement may be executed in one or more counterparts, and transmitted by facsimile. The counterparts taken together shall constitute the whole Agreement.

L. Entire Agreement. Each party acknowledges that no promise, inducement, or agreement not expressed herein has been made, and that this Agreement contains the entire agreement between the parties, and that the terms of this Agreement are contractual and not a mere recital. Any modification to this Agreement must be in writing and signed by both parties to be effective.



M. Severability. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect.

N. Assignment. Each Party represents and warrants that the Party owns the claims released herein by that Party and it has not sold, assigned, or otherwise transferred such claims, or any interest in them.

O. Costs and Fees. The Parties agree that each Party will be responsible for the payment of its own attorneys' fees and other expenses incurred in connection with the dispute which led to this Agreement.

P. No Third Party Beneficiaries. This Agreement is intended to inure only to the benefit of Ernest and Qwest, and their respective associates, owners, shareholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies, and attorneys. The parties do not intend to create any rights or benefits for any other persons or entities.

DATE: 9/14/01

ERNEST COMMUNICATIONS, INC.

By: [Signature] *Fran Masten*

Its: President

DATE: 9/17/01

QWEST CORPORATION

By: [Signature]

Its: SUP Wholesale MKB

[Handwritten mark]