

Qwest
421 Southwest Oak Street
Suite 810
Portland, Oregon 97204
Telephone: 503-242-5420
Facsimile: 503-242-8589
e-mail: carla.butler@qwest.com

Carla M. Butler
Sr. Paralegal

April 22, 2005

Annette Taylor
Oregon Public Utility Commission
550 Capitol St., NE
Suite 215
Salem, OR 97301

Re: UM-1168

Dear Ms. Taylor:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Direct Testimony of Donald K. Mason, along with a certificate of service.

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

Sincerely,



Carla M. Butler

CMB:
Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1168

In the Matter of PUBLIC UTILITY
COMMISSION OF OREGON STAFF
Investigation into Qwest Corporation's (and
possibly other parties') failure to file
interconnection agreements for Commission
approval under Section 252(a)(1) of the
Telecommunications Act

DIRECT TESTIMONY
OF
DONALD K. MASON
FOR
QWEST CORPORATION

EXHIBIT QWEST/1

April 22, 2005

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A. My name is Donald K. Mason. I am Director, Oregon Regulatory for Qwest Corporation (“Qwest”). My business address is 421 SW Oak, Room 810, Portland, Oregon 97204. I am testifying on behalf of Qwest.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. I have a Bachelor of Science in Mathematics and an MBA, both from Oregon State University. I began my career with Pacific Northwest Bell (“PNB”) in 1974 and have served in a variety of positions in the areas of operator services, finance, strategic planning, marketing and forecasting with PNB and its successors, U S WEST and Qwest. In my current position, which I’ve held since July 1994, I am responsible for regulatory operations in Oregon.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS COMMISSION?

A. Yes, I have submitted testimony in a variety of Oregon proceedings over the last ten years, including UP 9 (Sale of Exchanges), UM 767 (Depreciation), UT 124 (Price Regulation), UT 138 (Non-recurring Costs) and most recently UM 1140 (Rate Center Consolidation).

1 **Q. WHAT IS YOUR NORMAL ROLE RELATIVE TO THE FILING OF**
2 **INTERCONNECTION AGREEMENTS WITH THE COMMISSION?**

3 A. While I am not directly involved in the filing process, I have oversight
4 responsibility. I am one of the listed contacts for Qwest for all interconnection
5 agreement filings and routinely review copies of these filings. I monitor the
6 Commission filing process to ensure approval of the agreements, and I serve as a
7 point of contact if issues arise relative to the filings.

8

9 **Q. WHAT IS YOUR UNDERSTANDING AS TO HOW THIS SO-CALLED**
10 **UNFILED AGREEMENTS ISSUE AROSE IN OREGON?**

11 A. On or about March 11, 2002, Qwest in Oregon provided this Commission with
12 background information regarding a complaint that the Minnesota Department of
13 Commerce had filed against Qwest with the Minnesota Public Utilities
14 Commission on February 14, 2002. The Minnesota complaint alleged that Qwest
15 had entered into a number of interconnection agreements that should have been
16 filed, but were not filed, with the Minnesota Commission under section 252(a)(1).
17 Qwest also provided the Commission with its position regarding the complaint,
18 and further provided copies of the relevant pleadings and the agreements at issue.
19 A true and correct copy of Qwest's March 11, 2002 letter to the Commission is
20 attached hereto as Exhibit Qwest/2 to this testimony.

21

22 **Q. WHAT DID QWEST DO HERE IN OREGON AFTER THE MINNESOTA**
23 **COMPLAINT HAD BEEN FILED?**

24 A. As I mentioned, we initially provided the Commission with the background
25 information and pleadings and agreements at issue in the Minnesota complaint on
26 or about March 11, 2002. (See Qwest/2.) Shortly thereafter, I received a March
27 21, 2002 letter from Commission Staff Program Manager Dave Booth inquiring

1 about Qwest's possible failure to file interconnection agreements in Oregon.
2 Specifically, Mr. Booth requested "every contract, memorandum of
3 understanding, or other written [wholesale] agreement between [Qwest and a
4 CLEC] entered into on or after January 1, 2000, that has not been filed with the
5 [Commission]." A true and correct copy of Mr. Booth's March 21, 2002 letter to
6 Qwest is attached hereto as Exhibit Qwest/3 to this testimony.

7

8 **Q. WHAT DID QWEST DO IN RESPONSE TO STAFF'S MARCH 21, 2002**
9 **LETTER?**

10 A. On or about April 10, 2002, Qwest responded to Staff by providing copies of
11 approximately 73 wholesale agreements with CLECs that Qwest had not filed with
12 the Commission for approval and which Qwest believed were not required to be
13 filed with the Commission. Further, as time went on, and as Qwest discovered
14 additional agreements, or entered into new agreements with wholesale customers
15 which Qwest did not believe were within the filing requirements (but which Qwest
16 nevertheless wanted to provide to Commission Staff under an abundance of
17 caution), Qwest provided several more agreements to Staff. All in all, Qwest
18 provided a total of 89 agreements to the Staff through 2004. Throughout this
19 process, Qwest fully cooperated with Staff and was very forthcoming.

20

21 **Q. YOU MENTIONED "FILING REQUIREMENTS." WHAT DO YOU**
22 **MEAN BY THAT? DID QWEST ALSO SEEK ANY GUIDANCE FROM**
23 **THE FCC REGARDING ILEC FILING REQUIREMENTS UNDER**
24 **SECTION 252?**

1 A. Yes. By that reference, I refer to the fact that on April 23, 2002, Qwest filed a
2 petition for declaratory ruling with the FCC asking for an interpretation of section
3 252(a)(1) filing requirements.
4

5 **Q. DID THE FCC PROVIDE ANY GUIDANCE ON THESE FILING**
6 **REQUIREMENTS?**

7 A. Yes, but well after the execution date of the subject agreements. On October 4,
8 2002, the FCC issued Order No. 02-276, in WC docket 02-89 (“the FCC Order”)
9 granting in part and denying in part Qwest’s petition. The FCC ruled, among other
10 things, that “we find that an agreement that creates an ongoing obligation pertaining
11 to resale, number portability, dialing parity, access to rights-of-way, reciprocal
12 compensation, unbundled network elements, or collocation is an interconnection
13 agreement that must be filed pursuant to section 252(a)(1).” FCC Order, p. 5.
14 However, the FCC also found that “settlement agreements that simply provide for
15 ‘backward-looking consideration’ (e.g., the settlement of a dispute in consideration
16 for a cash payment or the cancellation of an unpaid bill) need not be filed” (i.e.,
17 “settlement contracts that do not affect an incumbent LEC’s ongoing obligation
18 relating to section 251 need not be filed”). FCC Order, pp. 6-7. The FCC further
19 found that “order and contract forms” to request service, and agreements executed in
20 connection with bankruptcy proceedings, do not need to be filed. FCC Order, p. 7.
21 A true and correct copy of the FCC’s October 4, 2002 Order No. 02-276 in WC
22 docket 02-89 is attached hereto as Exhibit Qwest/4 to this testimony.
23

24 **Q. DID QWEST MAKE A REMEDIAL FILING OF AGREEMENTS?**

25 A. Yes. In the summer of 2002, after some states had initiated investigations but
26 before the FCC issued its October 2002 ruling setting forth a filing standard,
27 Qwest wanted to alleviate any concerns that one CLEC was receiving a service

1 through a contract that was not available to others, even if the FCC eventually
2 ruled that the contract was not within the 252 filing standard. Therefore, Qwest
3 reviewed its wholesale contracts with CLECs and, on or about September 4, 2002,
4 Qwest filed for Commission approval of 16 agreements with Oregon CLECs. All
5 16 of these contracts had already been provided to Staff as part of Staff's
6 investigation. Because the FCC had yet to rule on a standard, Qwest selected a
7 standard that had been proposed by the Minnesota Department of Commerce in
8 the Minnesota proceedings, and applied that proposed standard to contractual
9 provisions that were still in effect.

10 Qwest later filed additional agreements. Thus, Qwest has filed all required
11 agreements that are still effective (i.e., that not expired or been superseded).

12

13 **Q. DID THE COMMISSION APPROVE THESE 16 AGREEMENTS?**

14 A. Yes. The Commission approved all 16 agreements on or about November 15, 2002.
15 The Commission also approved Qwest's subsequent remedial filings.

16

17 **Q. WERE THERE ANY OTHER AGREEMENTS THAT QWEST**
18 **DETERMINED SHOULD NOT BE FILED UNDER THE MINNESOTA**
19 **DEPARTMENT OF COMMERCE STANDARD?**

20 A. Yes. There were numerous agreements that either had expired or been superseded
21 by other agreements, and thus were no longer in effect. Thus, Qwest did not file
22 those agreements when it filed the 16 agreements in September 2002. Qwest also
23 did not file other agreements that merely resolved past disputes (i.e., that had no
24 ongoing or forward-looking obligations). Several other agreements, in retrospect,
25 did not involve an Oregon CLEC, or did not involve Qwest Corporation, the

1 ILEC but rather involved a Qwest affiliate and thus these agreements also were
2 not required to be filed.

3

4 **IV. NEGOTIATIONS WITH STAFF TO SETTLE THESE ISSUES**

5

6 **Q. AFTER QWEST HAD PROVIDED THE 89 AGREEMENTS TO STAFF,**
7 **AND HAD FILED THE THEN-EFFECTIVE AGREEMENTS, DID STAFF**
8 **AND QWEST ENTER INTO ANY DISCUSSIONS OR NEGOTIATIONS TO**
9 **RESOLVE STAFF'S INFORMAL INVESTIGATION OF THESE ISSUES?**

10 A. Yes. From about the spring of 2002 to the spring of 2004, Staff and Qwest had
11 conducted occasional informal discussions about these agreements in Oregon.
12 Thereafter, in spring 2004, Staff and Qwest began to conduct a series of face-to-
13 face meetings and telephone calls to review, analyze and attempt to come to an
14 agreement about the 89 contracts that Qwest had previously provided to Staff.

15

16 **Q. WERE YOU PERSONALLY INVOLVED IN THESE DISCUSSIONS?**

17 A. Yes. I participated on behalf of Qwest, along with Qwest's Oregon Corporate
18 Counsel, Alex Duarte. We discussed these issues with Mr. Booth and with
19 Celeste Hari of Staff, as well as with the Staff's attorney, Michael Weirich of the
20 Oregon Department of Justice, at times.

21

22 **Q. PLEASE DESCRIBE THESE DISCUSSIONS WITH STAFF.**

23 A. I would say they began as discussions, and then turned into formal negotiations,
24 about a variety of issues, including a framework to resolve the issues and a process
25 to review and analyze the 89 agreements. I would also describe the discussions as
26 arms-length negotiations about each particular agreement, and about which
27 contracts the parties would agree (for purposes of settling the investigation, and

1 after an extensive analysis of their terms and conditions in light of the FCC's
2 Order) should have been filed with the Commission shortly after they were entered
3 into. This analysis was without regard to whether any particular agreement was
4 still in effect, or had expired or been superseded. The parties also negotiated with
5 respect to the amount of money that Qwest would agree to pay for each contract
6 that the parties had agreed, for purposes of settling the investigation, should have
7 been filed in order to resolve the issues. Finally, I would describe the negotiations
8 as being professional, but would also say that both parties were zealous advocates
9 and that they forcefully advocated their positions.

10

11 **Q. HOW LONG DID THESE NEGOTIATIONS LAST?**

12 A. We began seriously discussing these issues in order to resolve them beginning in
13 April 2004, and we had several more meetings and telephone calls through about
14 mid- to late-August 2004. By then, the parties were in general agreement, in
15 principle regarding a settlement of the issues.

16

17 **V. DOCKET UM 1168**

18

19 **Q. DID THE COMMISSION OPEN A DOCKET?**

20 A. Yes. On August 30, 2004, while Qwest and Staff were close to resolving the
21 issues in principle, but before they had begun drafting any document to
22 memorialize any settlement, Staff prepared a memorandum to the Commission
23 summarizing the events in this matter up to that point. This memorandum
24 included the background of the issues, the FCC activity, the Staff's informal
25 investigation and Qwest's cooperation with that investigation including Qwest's
26 providing of the 89 agreements, various unfiled agreements dockets in other
27 states, the informal settlement discussions that the parties had engaged in, the

1 state of the law in Oregon, and the proposed formal investigation. Staff then
2 recommended that the Commission open a formal investigation docket, which the
3 Commission did on September 7, 2004, and which is this docket, UM 1168.

4

5 **Q. BRIEFLY DESCRIBE DOCKET UM 1168 AND THE PARTICIPATION**
6 **OF CLECs IN THIS DOCKET?**

7 A. On September 2, 2004, Mr. Booth of Staff sent a letter to all certified CLECs in
8 Oregon to advise them that Staff and Qwest had conducted informal discussions
9 regarding the unfiled agreements issue, and that they were close to the negotiation
10 of a stipulation. Mr. Booth wanted CLECs to attend a meeting on September 30,
11 2004 to discuss these issues and to raise any CLEC concerns about the proposed
12 stipulation to be negotiated. A true and correct copy of Mr. Booth's September 2,
13 2004 letter is attached as Exhibit Qwest/5 to this testimony.

14

15 A number of CLECs participated in the September 30 meeting, and they provided
16 their views and recommendations about a number of issues. Thereafter, a number
17 of CLECs intervened in the docket. A number of CLECs also participated in a
18 prehearing conference on October 26, 2004.

19

20 The CLECs also had an opportunity to file proposed issues lists in November
21 2004, and several CLECs filed proposed issues lists and/or replied to Staff's and
22 Qwest's proposed issues lists. The Administrative Law Judge then suspended the
23 docket on December 9, 2004 to allow Staff and Qwest to finalize their stipulation.
24 The parties also recently had a prehearing conference on March 17, 2005.

25

26 Thus, throughout the proceeding, the CLECs have had the opportunity to review the
27 agreements, comment on the issues, and review and comment on the stipulation.

1 **VI. AGREEMENT AND STIPULATION**

2
3 **Q. DID THE PARTIES ULTIMATELY AGREE TO A SETTLEMENT, AND**
4 **IF SO, WHAT DID THEY AGREE TO REGARDING THE NUMBER OF**
5 **AGREEMENTS AND THE AMOUNTS THAT QWEST WOULD PAY?**

6 A. Yes. The parties ultimately agreed on a total of 32 agreements that, in retrospect,
7 and in light of the FCC's Order, and for purposes of settlement, should have been
8 filed with the Commission by Qwest and the CLECs shortly after they were
9 entered into, but that were not filed. In addition, because three pairs of
10 agreements were so closely related, the parties agreed to essentially treat them as
11 one contract each, and thus there was a total of 29 "agreements" for purposes of
12 the settlement amount. Finally, in light of the amounts that the Commission could
13 pursue against Qwest in a court of law under ORS 759.990 (which allows the
14 Commission to seek up to \$50,000 for every alleged violation of a Commission
15 order or Commission requirement), the parties agreed to allocate up to \$50,000
16 each for certain agreements, and \$25,000 for other agreements. Specifically, the
17 parties agreed to 13 agreements at the \$50,000 amount, and 16 "agreements"
18 (actually 19 agreements, but three pairs counted as one each) at the \$25,000
19 amount, for a total settlement amount of \$1,050,000.

20
21 **Q. DOES THIS MEAN THAT THE MAJORITY OF THE AGREEMENTS**
22 **DID NOT HAVE TO BE FILED?**

23 A. Yes, that is correct. In fact, the parties agreed that 57 of the 89 agreements never
24 were required to be filed in the first place. I should note that at the time that Qwest
25 provided Staff with the 89 agreements, especially the 73 agreements that Qwest
26 provided to Staff in April 2002, Staff's request was for agreements with Oregon
27 CLECs. Obviously, many of the agreements with Oregon CLECs would not fall

1 within the definition of an “interconnection agreement” that should be filed under
2 section 252. For example, a large number of these 57 agreements were settlements
3 of past billing disputes, which do not create ongoing obligations under the FCC
4 Order. Other agreements pertained to non-section 251 services, federally-tariffed
5 services, or were with a Qwest affiliate (non-ILEC). In some cases, the agreements
6 did not even involve a CLEC’s operations in the state of Oregon.

7

8 **Q. DID THE PARTIES ULTIMATELY MEMORIALIZE THEIR SETTLEMENT?**

9 A. Yes. Staff and Qwest, through their counsel, negotiated a written stipulation
10 reflecting their agreement between October 2004 and January 2005. Staff and
11 Qwest shared the various drafts of this stipulation with all of the parties in docket
12 UM 1168 at all times, and thus the parties had an opportunity to make, and in some
13 cases did make, recommendations to the stipulation. By late January 2005, Staff
14 and Qwest had agreed to the final language of the stipulation. The stipulation was
15 then signed by Qwest on February 1, 2005 and by Staff on February 2, 2005.

16 A true and correct copy of the Stipulation is attached hereto as Exhibit Qwest/6 to
17 this testimony. In addition, the stipulation included an exhibit of the 32 agreements
18 that were used to calculate the amounts that Qwest has agreed to pay.

19

20 **Q. BRIEFLY DESCRIBE THE STIPULATION.**

21 A. I believe the stipulation is self-explanatory. I would add that it is simply the
22 memorialization of the agreement between Staff and Qwest resolving these issues.
23 I would further add that Staff and Qwest view this stipulation as a necessary
24 requirement in order for the Commission, and the parties in this docket, to see
25 exactly the terms and conditions of Staff’s and Qwest’s agreement, and so that the
26 Commission can approve it prior to the parties submitting it to the Marion County
27 Circuit Court for approval, as required under ORS 759.990.

1 **Q. WHY DID QWEST AGREE TO THE STIPULATION?**

2 A. Qwest agreed to the stipulation because it was fully aware that this was an issue
3 that needed to be resolved, and that the Commission believed that a monetary
4 payment, along the lines of what is set forth in ORS 759.990, would need to be
5 consummated in order to settle the outstanding issues. In addition, other state
6 commissions had investigated these issues, and in some instances, required Qwest
7 to pay certain amounts, and thus Qwest understood that, for all practical purposes,
8 a payment of money would be needed in order to resolve these issues in Oregon.
9 Finally, Qwest wanted to avoid any further litigation, and essentially desires to
10 put this matter behind it. Thus, although Qwest does not admit liability, and
11 Qwest may not agree with how Staff may characterize this matter or the
12 stipulation, Qwest believed it made sense to negotiate a settlement with Staff for
13 approval by the Commission, and ultimately, the court.

14
15 **Q. WHY DID QWEST AGREE TO THE \$50,000 AND \$25,000 AMOUNTS,
16 FOR A TOTAL OF \$1,050,000?**

17
18 A. Qwest agreed to these amounts in part because Staff was not willing to settle for
19 less than the \$50,000 maximum amount provided for under ORS 759.990 for those
20 agreements of which it was most concerned. Further, because there were some
21 agreements of which Staff was less concerned, it was willing to settle for half
22 (\$25,000) of the ORS 759.990 maximum amount. Thus, although as part of the
23 negotiation process Qwest offered significantly lower amounts, Staff would not
24 agree to these lower amounts, and ultimately, Qwest determined that it would agree
25 to settle at the \$25,000/\$50,000 levels, and for the total amount of \$1,050,000.

26

1 **Q. WHY DID QWEST AGREE IN PARAGRAPH 3 OF THE STIPULATION**
2 **TO FILE ALL PREVIOUSLY-UNFILED AGREEMENTS?**

3 A. As stated earlier, Qwest unilaterally made remedial filings region-wide of
4 previously-unfiled agreements in order to eliminate any issues regarding whether one
5 CLEC was receiving a service on a going-forward basis pursuant to a contract that
6 was not available to other CLECs. Also, Qwest made these filings even though the
7 FCC had yet to rule on a standard, and thus Qwest selected a standard that had been
8 proposed by the Minnesota Department of Commerce in the Minnesota proceedings.
9 This is why Qwest filed the 16 agreements in September 2002. Qwest also promptly
10 filed additional agreements after the FCC issued subsequent orders that implied that
11 other types of agreements were required to be filed.

12

13 **Q. WHY DID QWEST AGREE IN PARAGRAPH 4 OF THE STIPULATION**
14 **TO SUBMIT CONTRACTS FOR STAFF REVIEW?**

15 A. Qwest agreed to submit contracts for Staff review because Staff had requested
16 that this requirement be one of the conditions of the stipulation, and because there
17 may be circumstances when Qwest does not believe there is a filing requirement,
18 but perhaps Staff might have a different view. Thus, submitting these agreements
19 to Staff would allow it an opportunity to review them and advise Qwest if Staff
20 disagreed with Qwest's analysis, and its reasons for such disagreement, and the
21 parties could then discuss the issues. Moreover, Qwest already has been doing so,
22 as demonstrated by Qwest's submission of the Master Services Agreement with
23 MCI and other carriers, and the submission of the line sharing agreements with
24 Covad and other CLECs. Accordingly, Qwest agreed to a formal commitment to
25 continue to submit agreements with Oregon CLECs containing on-going terms to
26 the Staff for its review for a three-year period.

27

1 **Q. IS QWEST ADMITTING IT VIOLATED THE LAW?**

2 A. No. Qwest understands that Staff may have a different view, and thus that Staff
3 may recommend the Commission find that Qwest violated its filing requirements.
4 Qwest, however, believes that there was reasonable uncertainty about the filing
5 requirements about these agreements until the FCC clarified the requirements in
6 October 2002. Nevertheless, Qwest also recognizes that ultimately, the FCC,
7 while agreeing with Qwest's positions on some types of agreements, disagreed
8 with Qwest's position on other types of agreements. Further, given the number of
9 state commission proceedings in other states, and that Qwest (like any other
10 reasonable litigant) wanted to avoid the time, effort and resources involved in
11 litigation, Qwest believed it was in its best interests, as well as the Commission's,
12 to resolve the matter and to put this matter behind it. Nevertheless, Qwest would
13 not appeal any Commission finding which imposes the stipulated fine under ORS
14 759.990(6)(c).

15

16 **Q. WHY DOES THE STIPULATION MAKE THE PAYMENT BY QWEST**
17 **CONTINGENT ON COMMISSION APPROVAL OF THE STIPULATION,**
18 **THE CLOSING OF THIS DOCKET AND THE APPROVAL OF THE**
19 **STIPULATION BY THE CIRCUIT COURT?**

20 A. Clearly, Qwest does not believe it would be reasonable, or in the public interest,
21 for it to agree to pay more than \$1 million to the state as a means to resolve these
22 issues if the Commission were not to approve the stipulation, or if the docket were
23 to continue on other contested issues, or the Circuit Court ultimately were not to
24 approve the stipulation. In other words, Qwest wants to "buy its peace" and put
25 the matter behind it. Accordingly, if the stipulation is not approved by the
26 Commission or the court, or there are material changes to the stipulation, or if
27 Qwest is forced to continue to litigate issues in this docket, it is reasonable that

1 both Qwest and the Staff be allowed to withdraw from the stipulation, and thus
2 that they be allowed to proceed to litigate the matter in docket UM 1168.

3

4 **Q. IF THE STIPULATION IS APPROVED, WOULD CLECs LOSE ANY**
5 **RIGHTS?**

6 A. No. Paragraph 8 of the stipulation specifically provides that the stipulation is not
7 intended to affect any rights of CLECs, including their rights to seek any
8 appropriate relief in an appropriate forum for any alleged damages that they may
9 believe they have suffered as a result of Qwest's and the other CLECs' non-filing
10 of agreements. There would be no harm or prejudice to CLECs as a result of the
11 Commission approving the stipulation and closing the docket.

12

13 **Q. DID STAFF OR QWEST SUBMIT THE STIPULATION TO THE**
14 **COMMISSION?**

15 A. Yes. On February 4, 2005, Qwest submitted to Administrative Law Judge
16 Christina Smith a copy of the signed stipulation. (See Qwest/6.)

17

18 **Q. DID ANY CLEC OBJECT TO THE STIPULATION?**

19 A. No. In fact, one week prior to Qwest's submitting the stipulation to the
20 Administrative Law Judge, Qwest sent an email on January 28, 2005 to all parties
21 in the docket to ask whether any party had an objection. Only one CLEC
22 responded, and even then, that CLEC merely stated that it "has not yet decided
23 what position it will take with respect to [the] stipulation." (See Qwest/6.)

24

25

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27

1

V. CONCLUSION AND RECOMMENDATION

2

3 **Q. IN CONCLUSION, WHAT IS YOUR RECOMMENDATION TO THE**
4 **COMMISSION RELATIVE TO THE STIPULATION AND THIS DOCKET?**

5 A. Qwest respectfully recommends that the Commission approve the stipulation in
6 an order, and further, that it close this docket.

7

8 **Q: DOES THIS COMPLETE YOUR TESTIMONY?**

9 A: Yes, it does.

Qwest
421 Southwest Oak Street
Suite 953
Portland, Oregon 97204
Phone: 503-242-5234
FAX: 503-242-5465
e-mail: jpepple@qwest.com

Qwest/2
Mason/1

Judy Pepler
Vice President - Oregon



March 11, 2002

The Honorable Roy Hemmingway, Commission Chair
The Honorable Joan Smith, Commissioner
The Honorable Lee Beyer, Commissioner
Oregon Public Utility Commission
550 Capitol Street NE
Suite 215
Salem, Oregon 97310-2551

Re: Qwest Agreements with CLECs

Dear Commissioners:

I would like to provide you with background information regarding a new proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations, and it is important to understand what this case is about -- and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval. The DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However, it is telling that the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing last week, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that do not. The DOC fell back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented here.

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a PUC. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

- ***Agreements that define business-to-business administrative procedures at a granular level.*** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. The parties managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- ***Agreements implementing Commission orders.*** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has now agreed to do so.

However, this is also an important issue for Oregon and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted. First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them that the Telecommunications Act did not actually intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest also has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

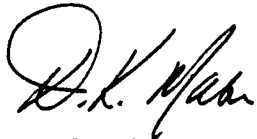
The Minnesota Commission soon will be holding a hearing to address the DOC's claims, and Qwest will defend its position vigorously. Meanwhile, however, we want you to be able to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Oregon. These agreements fall into two categories. One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment B). The second set of agreements is in effect today, and Qwest is submitting them as "conditional" interconnection agreements (Attachment C).¹ Should the Commission determine that they fall within the scope of Section 252 -- and Qwest submits they do not -- then those agreements may be approved as interconnection agreements in Oregon.

I hope that this information is helpful to the Commission. I want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me or Don Mason at 503-242-7454 if you have any further inquiries about these matters. Thank you.

Sincerely,



Judy Pepler
Oregon Vice President

cc: Phil Nyegaard, OPUC Staff
Dave Booth, OPUC Staff

¹ One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment C includes the one provision from the ATI agreement that is still in effect.



Oregon

John A. Kitzhaber, M.D., Governor

Qwest/3
Mason/1

Public Utility Commission

550 Capitol Street NE, Suite 215

Salem, OR 97301-2551

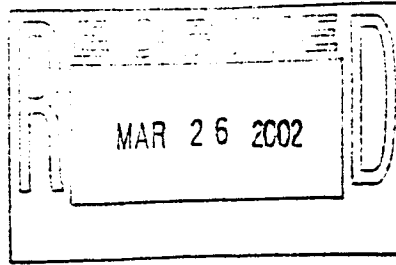
Administrative Services

(503) 373-7394

Consumer Services

1-800-522-2404

Local: (503) 378-6600



March 21, 2002

DON MASON
REGULATORY DIRECTOR
QWEST CORPORATION
421 SW OAK ST RM 810
PORTLAND OR 97204

RE: CLEC Agreements

On March 11, 2002, Judy Pepler sent to the Public Utility Commission of Oregon (Commission) a letter regarding "Qwest Agreements with CLECs." The letter states, "Qwest is submitting for the Commission's benefit copies of agreements identified by the Minnesota DOC that involve CLECs operating in Oregon." A number of agreements were included with the letter as attachments.

To ensure that the Commission has a copy of all agreements for Oregon as well as related information, please provide the following:

1. Every contract, memorandum of understanding, or other written agreement between Qwest and a competitive local exchange carrier (CLEC) for the state of Oregon that Qwest entered into on or after January 1, 2000, and that Qwest did not file with the Commission.
2. For each contract, memorandum of understanding, or other written agreement provided in response to number 1 above, an explanation of why Qwest did not file the contract, memorandum of understanding, or other written agreement with the Commission under 47 U.S.C. § 252(e).
3. A full copy of the complaint that the Minnesota Department of Commerce filed against Qwest before the Minnesota Public Utilities Commission alleging that Qwest failed to file CLEC agreements as required by law.

For purposes of this request, both Qwest and its predecessor U S WEST Communications, Inc. are referred to as Qwest Corporation or Qwest. **Please provide the requested information by April 10, 2002.**

Don Mason
Page 2

Contact me if you have questions regarding this request.

A handwritten signature in cursive script that reads "David Booth".

David Booth
Program Manager, Competitive Issues
Telecommunications Division
503-378-6635
dave.booth@state.or.us

cc: Phil Nyegaard
Celeste Hari
Mike Weirich, Department of Justice

Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2002

Released: October 4, 2002

By the Commission:

I. INTRODUCTION

1. On April 23, 2002, Qwest Communications International Inc. (Qwest) filed a petition for a declaratory ruling on the scope of the mandatory filing requirement set forth in section 252(a)(1) of the Communications Act of 1934, as amended (the Act).¹ Specifically, Qwest seeks guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of this section.² For the reasons explained below, we grant in part and deny in part Qwest's petition.

¹ 47 U.S.C. § 252(a)(1). *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 (filed April 23, 2002) (Qwest Petition).

² Qwest Petition at 3. The Commission requested and received comments on the Qwest Petition. See Pleading Cycle Established for Comments on 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, *Public Notice*, DA 02-976 (rel. April 29, 2002). The following parties submitted comments: AT&T Corp. (AT&T); Office of the Attorney General of the State of New Mexico and the Iowa Office of Consumer Advocate; Focal Communications Corporation and Pac-West Telecomm, Inc.; Iowa Utilities Board; Minnesota Department of Commerce; Mpower Communications Corp. (Mpower); New Edge Network, Inc.; PageData; Sprint Corporation (Sprint); Touch America, Inc. (Touch America); and WorldCom, Inc. (WorldCom). The following parties filed reply comments: Association of Communications Enterprises; Association for Local Telecommunications Services (ALTS); PageData; Qwest; Sprint; Verizon; VoiceStream Wireless Corporation; and WorldCom.

II. BACKGROUND

2. Section 252(a)(1) of the Act states:

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 subsections (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 . . . shall be submitted to the State commission under subsection (e) of this section.³

Qwest argues that this section can most logically be read to mean that the mandatory filing and state commission approval process should apply only to the "rates and associated service descriptions for interconnection, services and network elements."⁴ More precisely, Qwest contends that a negotiated agreement should be filed for state commission approval if it includes: (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).⁵

3. According to Qwest, the following categories of incumbent LEC-competitive LEC arrangements should not be subject to section 252(a)(1): (i) agreements defining business relationships and business-to-business administrative procedures (*e.g.*, escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards);⁶ (ii) settlement agreements;⁷ and (iii) agreements regarding matters not subject to sections 251 or 252 (*e.g.*, interstate access services, local retail services, intrastate long distance, and network elements that have been removed from the national list of elements subject to

³ 47 U.S.C. § 252(a)(1).

⁴ Qwest Petition at 10. Qwest contends that its interpretation of section 252(a)(1) is supported by the legislative history of the Telecommunications Act of 1996. *Id.* at 13-14.

⁵ Qwest Petition at 29. Qwest also indicates that a description of basic operations support systems functionalities and options to which the parties have agreed should be filed and subjected to state commission approval. *Id.* at 29-30.

⁶ Qwest Petition at 31-34.

⁷ Qwest Petition at 34-36.

mandatory unbundling).⁸

4. Qwest states that a Commission ruling on this issue will eliminate the prospect of multiple, inconsistent rulings by state commissions and federal courts.⁹ Qwest argues that a national policy concerning what must be filed under section 252(a)(1) is necessary to promote local competition, facilitate multi-state negotiations,¹⁰ and prevent overbroad interpretations of this filing requirement.¹¹ According to Qwest, an overbroad interpretation would reduce the incentives of incumbents and competitive LECs to implement bilateral arrangements that could benefit both parties. For example, Qwest states that the public disclosure of contractual provisions such as settlements of past disputes might discourage the parties from entering into such arrangements.¹² Qwest also contends that an overbroad reading of section 252(a)(1) creates legal uncertainty with respect to the validity of agreements that have not gone through the prior state commission approval process.¹³

5. Most commenters oppose Qwest's petition,¹⁴ arguing that it is unnecessary and that Qwest's proposal interprets too narrowly which agreements must be filed under section 252(a)(1).¹⁵ For example, several commenters argue that service quality and performance standards relate to interconnection and are therefore appropriately included in interconnection agreements.¹⁶ Commenters also contend that competitive LECs need dispute resolution, billing and provisioning provisions in their interconnection agreements.¹⁷ The commenters also disagree with Qwest's view that only certain portions of agreements (related to section 251(b) or (c)) need to be filed for state commission approval and argue instead that the entire agreement must be

⁸ Qwest Petition at 36-37.

⁹ Qwest Petition at 5.

¹⁰ Qwest Petition at 27.

¹¹ Qwest Petition at 22.

¹² Qwest Petition at 22.

¹³ Qwest Petition at 17-18, 23.

¹⁴ We note that Verizon filed comments to respond to, in its view, inaccurate statements made by certain commenters. See Verizon Reply at 1, 2-3.

¹⁵ See, e.g., AT&T Comments at 16-18; Minnesota Department of Commerce Comments at 32-34; WorldCom Comments at 7; ALTS Reply at 4.

¹⁶ WorldCom Comments at 7; ALTS Reply at 4.

¹⁷ WorldCom Comments at 7; ALTS Reply at 4. Verizon, however, argues that agreements for unregulated services such as billing and collection are not interconnection agreements that must be filed under section 252. Verizon Reply at 2.

filed for state commission review and approval.¹⁸

6. The commenters dispute Qwest's assertions concerning the burden of "overfiling" agreements for state commission approval¹⁹ and disagree with Qwest's interpretation of the legal status of agreements not filed under section 252 or not yet approved by state commissions under the same section.²⁰ Specifically, these commenters contend that nothing in section 252, or any other provision of the Act, provides that the parties are prohibited from abiding by the agreement's terms until a state commission completes its review of the negotiated agreement.²¹ Moreover, according to AT&T, not only does the 90-day approval process not present any legal impediment to parties that would like to begin operating under the terms of a negotiated agreement prior to state commission approval, there is no practical impediment (*e.g.*, compliance jeopardy) because interconnection agreements are rarely rejected.²²

III. DISCUSSION

7. We grant in part and deny in part Qwest's petition for a declaratory ruling. In issuing this decision, however, 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. Indeed, we believe this is consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.²³

8. We begin our analysis with the statutory language. Section 252(a)(1) provides that the binding agreement between the incumbent LEC and the requesting competitive LEC must include a "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."²⁴ In addition, section 251(c)(1) requires incumbent LECs to negotiate in good faith, in accordance with section 252, the particular terms and conditions of agreements to implement their duties set forth in sections 251(b) and (c).²⁵ Based on these

¹⁸ AT&T Comments at 4, 6-9; Mpower Comments at 7; Sprint Comments at 3; WorldCom Comments at 6; ALTS Reply at 2.

¹⁹ *See, e.g.* AT&T Comments at 13; Sprint Comments at 3.

²⁰ AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

²¹ AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

²² AT&T Comments at 12-13, citing Qwest Petition at 9.

²³ As an example of the substantial implementation role given to the states, throughout the arbitration provisions of section 252, Congress committed to the states the fact-intensive determinations that are necessary to implement contested interconnection agreements. *See, e.g.*, 47 U.S.C. § 252(e)(5) (directing the Commission to preempt a state commission's jurisdiction only if that state commission fails to act to carry out its responsibility under section 252).

²⁴ 47 U.S.C. § 252(a)(1).

²⁵ 47 U.S.C. § 251(c)(1).

statutory provisions, 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).²⁶ This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act. This standard recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs. We therefore disagree with Qwest that the content of interconnection agreements should be limited to the schedule of itemized charges and associated descriptions of the services to which the charges apply. Considering the many and complicated terms of interconnection typically established between an incumbent and competitive LEC, we do not believe that section 252(a)(1) can be given the cramped reading that Qwest proposes. Indeed, on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions.

9. We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1).²⁷ Unless this information is generally available to carriers (*e.g.*, made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements. The purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning.²⁸

10. 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. Should competition-affecting inconsistencies in state decisions arise, those could be brought to our attention through, for example, petitions for declaratory ruling. The statute expressly contemplates that the section 252 filing process will occur with the states.

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.

²⁷ Qwest Petition at 31-33.

²⁸ We note that Qwest has filed for state commission approval agreements containing both dispute resolution provisions and escalation clauses. See, *e.g.*, Qwest Supplemental Reply, WC Docket No. 02-148, at 26-27 (filed Aug. 30, 2002). We incorporate by reference this document into the record in the instant proceeding.

and we are reluctant to interfere with their processes in this area. Therefore, we decline to establish an exhaustive, all-encompassing "interconnection agreement" standard. The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed. We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval. At the same time, nothing in this declaratory ruling precludes state enforcement action relating to these issues.²⁹

11. Consistent with our view that the states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard, we decline to address all the possible hypothetical situations presented in the record before us. We are aware, however, of some disagreement concerning interconnection agreement issues raised recently in another proceeding previously before the Commission.³⁰ Consequently, we determine that additional, specific guidance on these issues would be helpful.

12. The first matter concerns which settlement agreements, if any, must be filed under section 252(a)(1). We disagree with the blanket statement made by Qwest in its petition that "[s]ettlement agreements that resolve disputes between ILECs and CLECs over billing or other matters are not interconnection agreements under Section 252."³¹ Instead, and consistent with the guidance provided above, we find that a settlement agreement that contains an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1). Merely inserting the term "settlement agreement" in a document does not excuse carriers of their filing obligation under section 252(a) or prevent a state commission from approving or rejecting the agreement as an interconnection agreement under section 252(e). However, we also agree with Qwest that those settlement agreements that simply provide for "backward-looking consideration" (e.g., the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed.³² That is, settlement contracts that do not affect

²⁹ This statement also applies to any state enforcement action involving previously unfiled interconnection agreements including those that are no longer in effect.

³⁰ *Application by Qwest Communications International Inc., Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC 02-148 (filed June 13, 2002). See also Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed Sept. 10, 2002) (withdrawing Qwest's joint applications filed in both dockets); *Application by Qwest Communications International Inc., Consolidated Application for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02-148. *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington and Wyoming*, WC Docket No. 02-189, Order, DA 02-2230 (rel. Sept. 10, 2002) (terminating both Qwest section 271 dockets).

³¹ Qwest Petition at 34.

³² Qwest Reply at 25-26. See also Minnesota Department of Commerce Comments at 6-7 (stating that it did not include in its complaint against Qwest filed with the Minnesota Public Utilities Commission "settlement agreements of what appear to be legitimate billing disputes").

an incumbent LEC's ongoing obligations relating to section 251 need not be filed.

13. Qwest has also argued, in another proceeding, that order and contract forms used by competitive LECs to request service do not need to be filed for state commission approval because such forms only memorialize the order of a specific service, the terms and conditions of which are set forth in a filed interconnection agreement.³³ We agree with Qwest that forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement do not constitute either an amendment to that interconnection agreement or a new interconnection agreement that must be filed under section 252(a)(1).

14. Further, we agree with Qwest that agreements with bankrupt competitors that are entered into at the direction of a bankruptcy court or trustee and do not otherwise change the terms and conditions of the underlying interconnection agreement are not interconnection agreements or amendments to interconnection agreements that must be filed under section 252(a)(1) for state commission approval.³⁴ We are unaware of any carrier submitting such agreements for state commission approval under section 252. Directing carriers to do so has the potential to raise difficult jurisdictional issues between the bankruptcy court and regulators and could entangle carriers in inconsistent and, possibly, conflicting requirements imposed by state commissions, bankruptcy courts, and this Commission.

IV. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251, 252 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251, 252, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Qwest's Petition for Declaratory Ruling IS GRANTED IN PART and IS DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³³ Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189, at 2-3 (filed Sept. 5, 2002). We incorporate by reference this letter into the record in the instant proceeding. See also Minnesota Department of Commerce Comments at 7 (stating that it also did not include in its complaint "day-to-day operational agreements that implement specific provisions of interconnection agreements" such as collocation agreements and applications for access to poles, ducts, conduits, and rights of way).

³⁴ Qwest Supplemental Reply, WC Docket No. 02-148, at 19-20 n.29 (filed Aug. 30, 2002).



Oregon

Theodore R. Kulongoski, Governor

Qwest/5
Mason/1

Public Utility Commission

550 Capitol Street NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

September 2, 2004

RECEIVED

SEP 07 2004

OREGON COMPETITIVE LOCAL EXCHANGE CARRIERS

RE: Meeting on Qwest Unfiled Agreements

Staff of the Public Utility Commission of Oregon (OPUC) will host a meeting at the following date, time and place to discuss with the industry a possible stipulated agreement between staff and Qwest regarding failure to file interconnection agreements for Commission approval. Staff is seeking informal comment from the industry before entering into a stipulation and submitting it to the Commission for approval.

Date: September 30, 2004

Time: 9:30 a.m.

Place: Main Hearing Room
Public Utility Commission Building
550 Capitol St NE
Salem, Oregon

Section 252(a)(1) of the Telecommunications Act requires incumbent local exchange carriers and their competitors to file interconnection agreements with state commissions. States are to approve or reject these agreements according to the timelines and standards set forth in Section 252(e). Staff believes that Qwest failed to comply with the filing requirement of Section 252(a)(1) when it entered into a series of secret contracts with a number of competitive local exchange carriers (CLECs). CLECs entering into these secret contracts also failed to file them as interconnection agreements under Section 252(a)(1). In staff's view, Qwest's secret contracts provided a number of CLECs with preferential interconnection-related rates, terms, and conditions.

The existence of secret contracts first became known in the state of Minnesota. In February 2002, the Minnesota Department of Commerce filed a complaint against

have authority to order Qwest to pay money directly to CLECs on the basis of the CLECs having been damaged by Qwest's failure to file. An Assistant Attorney General will be available at the September 30 meeting to discuss relevant Oregon law. The Department of Justice has given its advice to staff in writing. Copies are available upon request.

Please contact me if you have questions or need additional information. I will be unavailable September 7 through September 14, 2004. In my absence, contact Phil Nyegaard at 503-378-6486, or phil.nyegaard@state.or.us.



David Booth
Program Manager, Competitive Issues
Telecommunications Division
503-378-6635
dave.booth@state.or.us

cc: Alex M Duarte, Qwest Corporation
Don Mason, Qwest Corporation
Lisa Rackner, Ater Wynne LLP
Mark Trincherro, Davis Wright Tremaine LLP
Steven Weigler, AT&T

Qwest
421 SW Oak Street
Room 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Email: Alex.Duarte@qwest.com



Alex M. Duarte
Corporate Counsel

February 4, 2005

Honorable Christina Smith
Administrative Law Judge
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: UM 1168 – Stipulation signed by Staff and Qwest and filed for approval

Dear Judge Smith:

Enclosed with this letter are the original and five copies of the Stipulation and Agreement signed by Commission Staff and Qwest to resolve the issues that were the basis of Staff's request to open this docket and to close this docket. There is also an attachment identifying the 32 agreements that are at issue in the stipulation.

Qwest and Staff have shared this stipulation and attachment (and all drafts of same) with all of the other parties in the case, and indeed, the parties have been copied on all substantive communications between Qwest and Staff regarding the stipulation and attachment. Qwest also advised the parties last Friday, January 28, 2005, that Qwest and Staff had agreed to the final version of the stipulation and attachment, that we would be obtaining signatures this week, and that we would filing it today for approval with a request that you schedule a prehearing conference in the near future to discuss any process for consideration and approval that you deem appropriate.

Finally, Qwest and Staff requested that the intervenors advise them (within five business days, by this morning) whether such parties will support, oppose or be neutral regarding the stipulation. As of early this afternoon, the only party that responded was Universal, who stated that "Universal Tel. has not yet decided what position it will take with respect to your stipulation."

Accordingly, Qwest and Staff hereby file this Stipulation and Agreement for approval. Qwest and Staff also request that you schedule a prehearing conference in the near future to discuss any process for consideration and approval that you deem appropriate.

Thank you for your attention to this matter. If you have any questions regarding this response, please feel free to call me at your convenience.

Very truly yours,


Alex M. Duarte

cc Service List (w/ encls.)

STIPULATION AND AGREEMENT

THIS STIPULATION AND AGREEMENT ("Stipulation"), dated ^{February 2} ~~January 1~~ 2005, is entered into between QWEST CORPORATION ("Qwest") and STAFF of the PUBLIC UTILITY COMMISSION OF OREGON ("Staff") (collectively "Parties").

RECITALS

WHEREAS, section 252 of the Telecommunications Act of 1996 (Section 252) requires incumbent local exchange carriers ("ILECs") like Qwest and competitive local exchange carriers ("CLECs") to file interconnection agreements with state public utility commissions, which are to approve or reject these agreements according to the timelines and standards as set forth in Section 252(e) of the Act;

WHEREAS, on March 11, 2002, Qwest provided the Commission with background information regarding a complaint that the Minnesota Department of Commerce had filed against Qwest with the Minnesota Public Utilities Commission on February 14, 2002 that alleged that Qwest had entered into a number of interconnection agreements that should have been filed, but were not filed, with the Minnesota Commission under Section 252(a)(1), as well as Qwest's position regarding the complaint, and provided copies of pleadings and the agreements at issue;

WHEREAS, Staff began an investigation on March 21, 2002 about Qwest's possible failure to comply with the Section 252(a) filing requirements in Oregon by requesting "every contract, memorandum of understanding, or other written [wholesale] agreement between [Qwest and a CLEC] entered into on or after January 1, 2000, that has not been filed with the [Commission];"

WHEREAS, on April 19, 2002, Qwest responded to Staff's March 21, 2002 letter and provided copies of approximately 73 wholesale agreements with Oregon CLECs that Qwest had not filed with the Commission for approval, but which Qwest did not believe were required to be filed with the Commission, and provided several more agreements thereafter through 2004, for a total of 89 agreements;

WHEREAS, on April 23, 2002, Qwest filed a petition for declaratory ruling with the FCC asking for an interpretation of Section 252(a)(1) filing requirements;

WHEREAS, the FCC issued an order (No. 02-276, in WC docket 02-89) on October 4, 2002, granting in part and denying in part Qwest's petition, and ruling, *inter alia*, that "we find that an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to Section 252(a)(1)," but that "settlement agreements that simply provide for 'backward-looking consideration' (e.g., the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed" (i.e., "settlement contracts that do not affect an incumbent LEC's ongoing obligation relating to section 251 need not be filed"), and that "order and contract forms" to request service, and agreements executed in connection with bankruptcy proceedings, do not need to be filed;

WHEREAS, on or about September 4, 2002, Qwest filed for Commission approval 16 agreements with Oregon CLECs, all of which Qwest had already provided to Staff as part of Staff's investigation, but had not formally filed for approval, and which were still in effect (i.e., not expired or superseded);

WHEREAS, the Commission approved all 16 agreements on or about November 15, 2002;

WHEREAS, on August 30, 2004, Staff recommended that the Commission open a docket to investigate the possible failure of Qwest and other parties (CLECs) to file interconnection agreements for Commission approval under Section 252(a)(1) of the Act, and to determine appropriate penalties under ORS 759.990 for any failures to file such agreements;

WHEREAS, on September 7, 2004, the Commission adopted the Staff's August 30, 2004 recommendation to open a docket, and thus opened docket UM 1168;

WHEREAS, Qwest and Staff have engaged in informal discussions about these unfiled agreements aimed at reaching a stipulated agreement regarding a monetary payment to resolve these investigation issues;

WHEREAS, the Oregon Department of Justice has advised Staff that assessment of penalties against Qwest and possibly other parties (CLECs) is governed by ORS 759.990, which provides for penalties of not less than \$100 nor more than \$50,000, for each time that a carrier does one of four enumerated prohibitions;

WHEREAS, the Commission does not have independent authority to impose the fines provided for in ORS 759.990(6), as only a court can do so, and further, the Commission does not have authority to order the payment of money directly to CLECs on the basis of any allegations that CLECs having been damaged by Qwest's and CLECs' failure to file; and

WHEREAS, Qwest and Staff have reached a Stipulation regarding monetary amounts to be paid by Qwest to resolve the investigations of these unfiled agreements issues, and to resolve docket UM 1168 fully and completely upon Commission approval.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, Qwest and Staff agree as follows:

STIPULATION

1. Payment to General Fund and credited to Commission per ORS 759.990(8)

Qwest and Staff agree that Qwest will make a monetary payment of \$1,050,000 to the Oregon General Fund, and to be credited to the Commission's account, pursuant to ORS 759.990(8). This Stipulation to pay such amount is contingent on the Commission approving the Stipulation and closing the UM 1168 docket, without increasing the amount of the payment or requiring the payment by Qwest of any "credits," "reparations," "damages" or any other relief (monetary or otherwise) to any CLEC as a result of Qwest's or the CLECs' alleged violations of Section 252 and OAR 860-016-0020(3). Further, this Stipulation to pay such amount is also contingent on the Stipulation being approved by the Marion County Circuit Court, subject to the

provisions contained in paragraph 4 of this Stipulation. The Parties agree that Qwest will pay this amount 30 days after the time for any appeal has been exhausted.

2. Calculation of Monetary Amount

Qwest and Staff agree, for purposes of compromise of their respective positions and for the Stipulation only, and not to be used otherwise as precedent or evidence in any other proceeding (except that the parties agree the Stipulation will be submitted by the Commission to the Marion County Circuit Court in order to obtain a judgment consistent with this Stipulation), that they have calculated the \$1,050,000 based on an agreement, for purposes of this Stipulation only, that 32 of the 89 agreements which Qwest provided to Staff should have been filed, in 29 separate filings, shortly after the execution of such agreements. Qwest and Staff have also agreed, for purposes of compromise of their respective positions and for the Stipulation only, and not to be used otherwise as precedent or evidence in any other proceeding (except that the parties agree the Stipulation will be submitted by the Commission to the Marion County Circuit Court in order to obtain a judgment consistent with this Stipulation), that the agreed monetary amount for 13 such required filings was \$50,000 each, and that the agreed monetary amount for 16 such required filings was \$25,000 each, for a total monetary amount of \$1,050,000. A chart identifying the 32 agreements at issue is attached to this Stipulation, marked as Exhibit A, and is incorporated by this reference.

3. Agreement to File all previously unfiled Agreements that are still in Effect

Qwest agrees to file for approval all agreements that the parties agree Qwest should have filed under Section 252(a)(1) and OAR 860-016-0020, excluding contracts that are no longer effective or that Qwest has already filed for approval. To the best of Qwest's knowledge, Qwest has already filed all previously unfiled agreements that the parties agree Qwest should have filed under Section 252(a)(1) and OAR 860-016-0020 and that are still effective.

4. Submission of Contracts for Staff Review

Qwest agrees that it will submit for Staff review all wholesale contracts with competitive local exchange carriers containing on-going terms that Qwest determines it need not file for approval under Section 252(a)(1) and OAR 860-016-0020. Qwest agrees to do so for a period of three years from the date that this Stipulation is executed by both parties. If Staff disagrees with Qwest about the need to file any particular agreement, Staff agrees to advise Qwest with its reasons why Staff believes Qwest should file the contract for approval. Qwest's agreement to submit these contracts to Staff for Staff's review is without waiver of any legal position it may have about the lack of a filing requirement for any particular contract.

5. No Admission of Liability or Precedential Effect

Staff believes the evidence it has gathered in this proceeding is sufficient to support a finding that Qwest violated Section 252 and OAR 860-016-0020(3) by failing to file certain interconnection agreements in a timely manner with the Commission for its review. Qwest, however, does not believe there has been any evidence of any such violations, in part because there has been no evidence submitted in docket UM 1168. Nonetheless, and notwithstanding Staff's and Qwest's views of the issues in the docket, the Parties agree that the agreements reached in this Stipulation are not admissions by either party regarding the merits of their

respective legal positions, including that they are not admissions by Qwest that it violated Section 252(a)(1) of the Act, or admissions by Staff that Qwest complied with its obligations under Section 252(a)(1). In particular, this Stipulation does not constitute an agreement or acquiescence by any party to the method or theories used by any party in deciding to enter this Stipulation. Although the parties agree there is no admission of liability or precedential effect in this Stipulation as described in paragraphs 2 and 5 above, Qwest and Staff further agree that once this Stipulation becomes final, it will become a public document. Thus, a CLEC may use the publicly-available Stipulation in any subsequent proceeding against Qwest for any alleged damages in any appropriate forum consistent with and subject to the terms of the Stipulation and subject to the rules of evidence and admissibility of such forum.

6. Stipulation Contingent on Commission and Court Approval

Qwest and Staff agree that they will seek approval from the Commission of this Stipulation, and that if the Commission does not approve the Stipulation, or modifies it in any material way, or if the Commission expands the scope or issues of docket UM 1168 to include possible alleged “credits,” “damages,” “reparations” or any other relief (monetary or otherwise) to CLECs, the Parties reserve their rights to withdraw from the Stipulation and litigate the issues in docket UM 1168. Qwest and Staff further agree that if the Commission approves the Stipulation, and does not expand the UM 1168 docket beyond the issues in this Stipulation, the Commission will need to seek approval of the Stipulation from the Marion County Circuit Court (“Circuit Court”) in order to impose the monetary penalties. Qwest and Staff further agree that if the Circuit Court does not approve the Stipulation, or modifies it in any material way, the Parties reserve their rights to withdraw from the Stipulation and litigate the issues in docket UM 1168. Finally, Qwest and Staff agree that if the Circuit Court approves the Stipulation, without any additional conditions, but any intervenor files an appeal of such approval, Qwest is not obligated to pay the monetary amount unless and until all appeals of the Circuit Court’s approval have been exhausted, and thereafter, will not need to pay such amount until 30 days after the time for any appeal has been exhausted.

7. Stipulation Contingent on Commission order of complete resolution of UM 1168

Qwest and Staff further agree that this Stipulation is contingent on a Commission order that provides that approval of the Stipulation shall be a full and complete resolution of all matters in docket UM 1168. Qwest and Staff further agree that if a Commission order does not provide that approval of the Stipulation results in a full and complete resolution of all matters in docket UM 1168, the Parties reserve their rights to withdraw from this Stipulation, and thus reserve their rights to litigate the issues in docket UM 1168.

8. Individual CLEC Rights Not Affected

The promises or provisions in this Stipulation are not intended to create any specific rights or remedies for any CLEC, or to expand or contract any CLEC’s rights in any way, and may not be enforced except by the Circuit Court, the Commission, its Staff or Qwest. Qwest and Staff further agree that nothing in this Stipulation precludes a CLEC from filing any appropriate action against Qwest or any CLEC in any appropriate forum for any alleged damages as a result of any alleged failures to file interconnection agreements.

9. Integrated Document

The Parties recommend that the Commission and Circuit Court adopt this Stipulation in its entirety. The Parties have negotiated this Stipulation as an integrated document. Accordingly, if the Commission or Circuit Court in any order or decision rejects all or any part of this Stipulation, or materially adds to or changes any of its terms, each party reserves the right to withdraw from the Stipulation upon written notice to the Commission or Circuit Court and Qwest within fifteen (15) days of receiving notice of any such action by the Commission or the Circuit Court. In the event of such withdrawal, neither party will be bound by any provision of the Stipulation, and no such term may be cited or used against any party in connection with any case or proceeding, or otherwise.

10. No Waiver

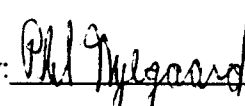
Qwest and Staff have entered this Stipulation to resolve disputed issues, and neither party admits or denies any fact or legal position at issue.


IT IS SO AGREED.

QWEST CORPORATION

STAFF OF THE PUBLIC UTILITY
COMMISSION

By: 

By: 

Its: 

Its: Administrator, Telecommunications Division

Date: 2-1-05

Date: 2/2/05

UM 1168

**LIST OF 32 AGREEMENTS WHICH STAFF AND QWEST AGREE SHOULD HAVE BEEN BE FILED
(FOR PURPOSES OF STIPULATION/MOU)**

CLLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
Advanced TelCom Group, Inc. (now Ionex)	Confidential Settlement Agreement	6/30/2000	not filed	\$50,000	not filed
Advanced TelCom Group, Inc.	Amended Confidential Settlement Agreement	03/15/2001	not filed	\$50,000	not filed
Advanced TelCom Group, Inc.	Agreement for Migration of Services	02/08/2002	not filed	\$25,000	not filed
Electric Lightwave, Inc.	Confidential Billing Settlement Agreement and Release	12/30/1999	not filed	\$50,000	not filed
Electric Lightwave, Inc.	Amendment No. 1 to the Confidential Billing Settlement Agreement and Release of 12/30/1999	06/21/2000	not filed	\$25,000 (combined with ELI contract below)	not filed
Electric Lightwave, Inc.	Second Amendment to the Confidential Billing Settlement Agreement and Release of 12/30/1999	04/30/2001	not filed	\$25,000 (combined with ELI contract above)	not filed
Electric Lightwave, Inc.	Third Amendment to the Confidential Billing Settlement Agreement and Release of 12/30/1999	07/19/2001	not filed	\$25,000	not filed
Ernest Communications, Inc.	Confidential Settlement Agreement and Release	09/17/2001	105(3)	\$25,000	10/3/02
Fairpoint Communications Solutions Corp.	Confidential Billing Settlement Agreement	09/04/2001	192(6)	\$25,000	10/3/02

CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
McLeod USA	Confidential Billing Settlement Agreement	04/28/2000	302(9)(10)	\$25,000	10/3/02
McLeod USA	Purchase Agreement	10/02/2000	302(11)	\$50,000	10/3/02
MCI WorldCom Network Service, Inc.	Business Escalation Agreement	06/29/2001	1(6)	\$25,000	10/3/02
MCI WorldCom Network Services, Inc.	Confidential Billing Settlement Agreement	06/29/2001	1(7)	\$50,000	10/3/02
Teleport Communications Group, dba AT&T Local	Confidential Billing Settlement Agreement and Release	03/13/2000	not filed	\$50,000	not filed
XO -Nextlink Communications, Inc.	Confidential Billing Settlement Agreement	05/12/2000	not filed	\$50,000	not filed
XO Subs and XO Communications, Inc.	Confidential Billing Settlement Agreement - QC	12/31/2001	142(4)	\$25,000	9/4/02
ATI (Eschelon)	Confidential/Trade Secret Stipulation Between ATI and U S WEST	02/28/2000	not filed	\$50,000	not filed
Eschelon Telecom	Trial Agreement	07/21/2000	not filed	\$50,000	not filed
Eschelon	Confidential Agreement (escalation procedures)	11/15/2000	not filed	\$50,000	not filed
Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation	11/15/2000	not filed	\$50,000	not filed
Eschelon	Confidential Qwest Letter Regarding Status of Switched Access Minute Reporting Implementation Plan	07/03/2001	not filed	\$25,000	not filed
Eschelon	Implementation Plan	07/31/2001	not filed	\$50,000	not filed
Covad	U S WEST Service Level Agreement - Unbundled Loop Services	04/19/2000	96(3)(4)	\$50,000	10/3/02

CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
McLeod USA	Confidential Letter Agreement (escalation)	10/26/2000	302(11)	\$25,000	10/3/02
Electric Lightwave, Inc.	Binding Letter Agreement (1)	07/19/2001	not filed	\$25,000	not filed
CDS Networks, Inc.	Internetwork Calling Name Delivery Service, Internetwork Calling Name Delivery Service Agreement	03/31/2002	80(3)	\$25,000	1/10/03
U S WEST Wireless, LLC	Transient Interim Signaling Capability Service Agreement	03/02/1998	50(2)	\$25,000	1/15/03
Allegiance Telecom of Oregon, Inc.	Internetwork Calling Name Delivery Service, Internetwork Calling Name Delivery Service Agreement	02/08/2001	276(6)	\$25,000	1/10/03
Frontier Local Services, Inc. (now known as Global Crossing)	Directory Assistance Agreement	07/31/98	52(7)	\$25,000 (combined with Frontier contract below)	6/15/04
Frontier Local Services, Inc. (now known as Global Crossing)	Operator Services Agreement	07/31/98	52(6)	\$25,000 (combined with Frontier contract above)	6/15/04
American Telephone Technology (now known as Eschelon)	Directory Assistance Agreement	02/16/00	199(16)	\$25,000 (combined with Eschelon below)	6/15/04

CLEC	Title of Agreement	Date	ARB No.	Stipulated Amount	Filing Date
American Telephone Technology (now known as Eschelon)	Operator Services Agreement	02/16/00	199(17)	\$25,000 (combined with Eschelon above)	6/15/04

CERTIFICATE OF SERVICE

UM-1168

I hereby certify that on the 4th day of February, 2005, I served the foregoing **QWEST CORPORATION'S LETTER AND STIPULATION TO THE HONORABLE CHRISTINA SMITH** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address as shown below.

Dennis Ahlers
Eschelon Telecom of Oregon Inc
730 Second Ave. S.
Suite 900
Minneapolis, MN 55402-2489

Charles Best
Electric Lightwave LLC
4400 NE 77th Avenue
Vancouver, WA 98662

*Dave Booth
Public Utility Commission
PO Box 2148
Salem, OR 97308-2148

Joseph D Chicoine
Electric Lightwave LLC
PO Box 340
Elk Grove, CA 95759

*K. C. Halm
Cole Raywid & Braverman Llp
1919 Pennsylvania Ave. NW
Suite 200
Washington, DC 20006-3458

Alex M Duarte
Qwest Corporation
421 SW Oak St., Ste. 810
Portland, OR 97204

*Karen J Johnson
Integra Telecom Of Oregon Inc
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

*Jeffrey Martin
Universal Telecom Inc
1600 SW Western Blvd.
Suite 290
Corvallis, OR 97333

*Lisa F Rackner
Ater Wynne LLP
222 SW Columbia St.
Suite 1800
Portland, OR 97201-6618

*Brad Schaffer
Rio Communications Inc
2360 NE Stephens
Suite 100
Roseburg, OR 97470

*Gregory Scott
Integra Telecom Of Oregon Inc
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

*Karen S. Shoresman Frame
Covad Communications Co.
7901 Lowry Blvd.
Denver, CO 80230

*Mark P Trincherro
Davis Wright Tremaine LLP
1300 SW Fifth Ave Ste 2300
Portland, OR 97201-5682

*Michael T Weirich
Department of Justice
1162 Court St. NE
Salem, OR 97301-4096

Larry Reichman
Perkins Coie LLP
1120 NW Couch St.
10th Floor
Portland, OR 97209-4128

DATED this 4th day of February, 2005.

QWEST CORPORATION

By: Alex M. Duarte *amb*
ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation

CERTIFICATE OF SERVICE

UM-1168

I hereby certify that on the 22nd day of April, 2005, I served the foregoing **QWEST CORPORATION'S DIRECT TESTIMONY OF DONALD K. MASON** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address as shown below.

Dennis Ahlers
Eschelon Telecom of Oregon Inc
730 Second Ave. S.
Suite 900
Minneapolis, MN 55402-2489

Charles Best
Electric Lightwave LLC
4400 NE 77th Avenue
Vancouver, WA 98662

*Dave Booth
Public Utility Commission
PO Box 2148
Salem, OR 97308-2148

Joseph D. Chicoine
Electric Lightwave LLC
PO Box 340
Elk Grove, CA 95759

*K. C. Halm
Cole Raywid & Braverman Llp
1919 Pennsylvania Ave. NW
Suite 200
Washington, DC 20006-3458

Alex M Duarte
Qwest Corporation
421 SW Oak St., Ste. 810
Portland, OR 97204

*Karen J. Johnson
Integra Telecom Of Oregon Inc
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

*Jeffrey Martin
Universal Telecom Inc
1600 SW Western Blvd.
Suite 290
Corvallis, OR 97333

*Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia St.
Suite 1800
Portland, OR 97201-6618

*Brad Schaffer
Rio Communications Inc
2360 NE Stephens
Suite 100
Roseburg, OR 97470

*Gregory Scott
Integra Telecom Of Oregon Inc
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

*Greg Diamond
Covad Communications Co.
7901 Lowry Blvd.
Denver, CO 80230

*Mark P. Trinchero
Davis Wright Tremaine LLP
1300 SW Fifth Ave Ste 2300
Portland, OR 97201-5682

*Michael T. Weirich
Department of Justice
1162 Court St. NE
Salem, OR 97301-4096

Larry Reichman
Perkins Coie LLP
1120 NW Couch St.
10th Floor
Portland, OR 97209-4128

DATED this 22nd day of April, 2005.

QWEST CORPORATION



By: _____

ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation