

In the Matter of IN THE MATTER OF THE FILING FOR APPROVAL OF A MASTER SERVICES AGREEMENT BETWEEN QWEST CORPORATION AND MCIMETRO ACCESS TRANSMISSION SERVICES, LLC

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
8/2 04	Filed and Docketed;
8/5 04	Weekly Filings;
8/17 04	Motion to Dismiss Filing for Approval of Negotiated Commercial Agreement;
8/23 04	AT&T's Comments;
8/23 04	Response to Quwest Motion to Dismiss (McMetro Access Trans Services);
10/6 04	Supplement to Response to Quwest's Motion to Dismiss;
10/8 04	Quwest's Joint Reply to McI Metro's Response to Quwest Motion to Dismiss ^{and to AT&T's comments;}
10/21 04	Supplement to McI Metro's Response to Quwest's Motion to Dismiss;
10/21 04	Quwest's Reply to McI's Supplement to Response to Quwest's Motion to Dismiss;
10/25 04	Supplement to McI Metro's Response to Quwest's Motion to Dismiss;
10/29 04	Order Denying Motion to Dismiss; Order Approving Agreement;
10/29 04	Docket Closed.

TC04-144

Thomas F. Dixon
Senior Attorney
Western Law and Public Policy



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Suite 4200
Denver, CO 80202
Telephone 303 390 6206
Fax 303 390 6333
thomas.f.dixon@mci.com

July 30, 2004

Pam Bonrud, Executive Director
Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

RECEIVED

AUG 02 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Qwest/MCI Agreements executed July 16, 2004

Dear Ms. Bonrud:

Pursuant to Section 252 of the Federal Telecommunications Act of 1996, MCI submits 11 copies of the following agreements for review and approval:

Amendment to Interconnection Agreement between MCI and Qwest,
dated July 16, 2004 and
Master Services Agreement between MCI and Qwest, dated July 16, 2004.

Also enclosed is a CD that provides you with electronic copies of the agreements. If you have any questions please feel free to call me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas F. Dixon", written in a cursive style.

Thomas F. Dixon

Atch: Agreements

The Amendment sent in with this filing had already been sent in by Tom Welk on July 26, and I opened Docket TC04-135 for that Amendment. Therefore this docket only relates to the Qwest Master Services Agreement and not the Amendment.

RECEIVED

AUG 02 2004

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE) DOCKET NO. _____
INTERCONNECTION AGREEMENT)
BETWEEN QWEST CORPORATION AND)
MCImetro ACCESS TRANSMISSION)
SERVICES, LLC. FOR APPROVAL OF AN)
AMENDMENT FOR ELIMINATION OF) **AGREEMENT FILING**
UNE-P AND IMPLEMENTATION OF BATCH)
HOT CUT PROCESS AND QPP MASTER)
SERVICE AGREEMENT.)

MCImetro Access Transmission Services, L.L.C., ("MCImetro") submits for approval a negotiated amendment between MCImetro and Qwest Corporation ("Qwest") entitled Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts ("BHC Amendment") as well as QPP Master Service Agreement ("QPP MSA") also between MCImetro and Qwest for the Commission's review and approval each attached hereto.

1. General Description of Agreements

A. Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, including Attachment A thereto, and

B. QPP Master Service Agreement, including Service Exhibit 1 – Qwest Platform Plus™ Service, Attachment A to Exhibit 1 Performance Targets for Qwest QPP Service, Rate Sheets, and Qwest Platform Plus™ (QPP™) Rate Page - Port Rate Increases

1 **2. A description of the services provided pursuant to the agreement or**
2 **amendment and the means by which the services are provided pursuant to the**
3 **agreement or amendment;**
4

5 A. BHC Amendment - MCImetro previously purchased on an
6 unbundled basis from Qwest certain combinations of network elements, ancillary
7 functions, and additional features, including without limitation the local loop, port,
8 switching, and shared transport combination commonly known as unbundled network
9 element platform ("UNE-P"). These UNE-P arrangements were previously obtained by
10 MCImetro under the terms and conditions of certain interconnection agreements
11 including without limitation in certain states Qwest's statement of generally available
12 terms. Both MCImetro and Qwest acknowledge certain regulatory uncertainty in light of
13 the DC Circuit Court's decision in United States Telecom Association v. FCC, 359 F.3d
14 554 (March 2, 2004), with respect to the future existence, scope, and nature of Qwest's
15 obligation to provide such UNE-P arrangements under the Communications Act (the
16 "Act"). Therefore, to address such uncertainty and to create a stable arrangement for the
17 continued availability to MCImetro from Qwest of services technically and functionally
18 equivalent to the June 14, 2004 UNE-P arrangements the parties have contemporaneously
19 entered into a Master Service Agreement for the provision of Qwest Platform Plus™
20 service (the "QPP™ MSA").

21 The term of the Amendment begins on July 16, 2004 remains in effect through
22 July 31, 2008. The provisions of the Amendment are intended to amend and supercede
23 those provisions of MCImetro's existing and all future interconnection or other
24 agreements only as they relate to the offering of unbundled mass market switching or
25 unbundled enterprise switching and unbundled shared transport in combination with other

1 network elements as part of the unbundled network element platform, and Batch Hot
2 Cuts. Upon deployment of Qwest's Batch Hot Cut Status Tool and amendment of
3 Appointment Scheduler to accommodate Batch Hot Cut orders, Qwest shall provide
4 Batch Hot Cuts to MCImetro upon the rates, terms and conditions stated in the
5 Agreement. The base Batch Hot Cut price is \$27.50 per line unless the incentive
6 thresholds below are met. If the number of MCImetro's QPP™ lines as of October 31,
7 2005 equals or exceeds 90% of the sum of MCImetro's QPP™ and UNE-P lines as of
8 October, 31, 2004, the Batch Hot Cut rate for MCImetro will be reduced to \$23 per line
9 for Batch Hot Cuts performed during the time period from January 1, 2006 through
10 December 31, 2006. If the number of MCImetro's QPP™ lines as of October 31, 2006
11 equals or exceeds 90% of the sum of MCImetro's QPP™ and UNE-P lines as of October,
12 31, 2005, the Batch Hot Cut rate for MCImetro will be reduced to \$18.50 per line for
13 Batch Hot Cuts performed during the time period from January 1, 2007 through end of
14 the term of this Amendment. For purposes of this section, the number of QPP™ lines
15 and the sum of QPP™ and UNE-P lines shall be calculated on a nationwide basis that
16 includes all states in which this Amendment is in effect.

17 Integrated Digital Loop Carrier ("IDLC") is not a part of the standard Batch Hot
18 Cut process. However, the pricing for Batch Hot Cuts will apply to IDLC loops. IDLC
19 loops will be batched together in quantities of no more than 40 IDLC loops per state, per
20 day. Line Splitting to Loop Splitting conversions can be included the Batch Hot Cut
21 process at the same pricing for Batch Hot Cuts stated above. Batch Hot Cut limits are in
22 effect as established in the Batch Hot Cut Process described in Attachment A.

1 During the term of the Agreement Qwest will not offer or provide to MCImetro,
2 and MCImetro will not order or purchase from Qwest, unbundled mass market switching,
3 unbundled enterprise switching or unbundled shared transport, in combination with other
4 network elements as part of UNE-P, out of its existing interconnection agreement with
5 Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C.
6 §§251 and 252 that MCImetro or one of its affiliates may in the future enter into with
7 Qwest.

8 B. QPP MSA - Qwest will provide QPP™ service offerings to
9 MCImetro. MCImetro may use QPP™ services to provide any telecommunications
10 services, information services, or both that MCImetro chooses to offer. QPP™ services
11 consists of the Local Switching Network Element (including the basic switching function,
12 the port, plus the features, functions, and capabilities of the Switch including all
13 compatible and available vertical features, such as hunting and anonymous call rejection,
14 provided by the Qwest switch) and the Shared Transport Network Element in
15 combination, at a minimum to the extent available on UNE-P under the applicable
16 interconnection agreement or SGAT where MCImetro has opted into an SGAT as its
17 interconnection agreement (collectively, “ICAs”) as the same existed on June 14, 2004.
18 Qwest Advanced Intelligent Network (AIN) services (such as Remote Access
19 Forwarding/Call Following), Qwest Digital Subscriber Line (DSL), and Qwest Voice
20 Messaging Services (VMS) may also be purchased with compatible QPP™ services. The
21 term of the Amendment begins on July 16, 2004 remains in effect through July 31, 2008.

22 The recurring (“MRC”) and nonrecurring (“NRC”) rates for QPP™ services and
23 all applicable usage-based rates and miscellaneous charges (other than applicable

1 intercarrier compensation charges such as access charges and reciprocal compensation
2 and MRCs and NRCs for elements and services provided pursuant to MCImetro's ICAs)
3 are stated in the attached Rate Sheets. The rates for QPP™ services set forth in the
4 attached Rate Sheets will be in addition to the applicable rates for elements and services
5 provided under MCImetro's ICAs. The loop element combined with a QPP™ service
6 will be provided pursuant to MCImetro's ICAs with Qwest at the rates set forth in those
7 ICAs. The term of the Amendment begins on July 16, 2004 remains in effect through
8 July 31, 2008.

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

17 **3. The facts upon which MCImetro will rely to demonstrate that the**
18 **agreement or amendment does not discriminate against other telecommunications**
19 **carriers who are interconnected with any of the parties;**
20

21 Both the BHC Amendment and the QPP MSA are available in their entirety to
22 any telecommunications carrier under the same rates, terms and conditions. Qwest has
23 posted the BHC Amendment on its wholesale website at:
24 [http://www.qwest.com/wholesale/downloads/2004/040722/UNE-Pelim-BatchHotCut7-](http://www.qwest.com/wholesale/downloads/2004/040722/UNE-Pelim-BatchHotCut7-20-04.doc)
25 [20-04.doc](http://www.qwest.com/wholesale/downloads/2004/040722/UNE-Pelim-BatchHotCut7-20-04.doc) wherein it states: "Below are New Products and Services not in the filed

1 Statement of Generally Available Terms (SGATs). The language can be incorporated in
2 an Interconnection Agreement . . .”
3 and the QPP MSA at <http://www.qwest.com/wholesale/clecs/commercialagreements.html>
4 wherein in it states “A Carrier may use the Commercial Agreements below, to enter into
5 a business relationship with Qwest . . .”

6 Finally, by filing these agreements for review and approval, the terms will be
7 available for opt-in purposes if these Agreements are approved.

8 **4. The facts upon which the MCImetro will rely to demonstrate that the**
9 **Agreement or Amendment is in the public interest.**

10
11 These agreements are consistent with the Commission’s pro-competitive policies
12 described in its rules, statutes, FCC rules and the Communications Act of 1934, as
13 amended in 1996. Further, these agreements are consistent with general policies
14 encouraging parties to settle disputes and calling upon parties to negotiate in good faith
15 on wholesale rates, terms and conditions for UNEs. These agreements may permit
16 MCImetro to continue to offer The Neighborhood™ suite of product and services to
17 business and residential customers in the state thereby allowing MCImetro to continue to
18 compete in the mass market.

19 **5. Affidavit**

20 Attached hereto is an affidavit signed by William Levis, Director, Western Public
21 Policy, who is authorized to act on behalf of the MCImetro, stating that the contents of
22 this filing and all attachments, are true, accurate, complete and correct.

23 WHEREFORE, MCImetro requests the Commission review and approve the
24 attached agreements.

25 Dated: July 30, 2004

1 MCImetro ACCESS TRANSMISSION
2 SERVICES, LLC
3

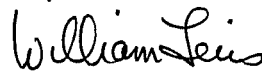
4 By: 

5 Thomas F. Dixon, #500
6 707 – 17th Street, #4200
7 Denver, Colorado 80202
8 303-390-6206
9 303-390-6333 fax
10 thomas.f.dixon@mci.com
11

12
13 **AFFIDAVIT**

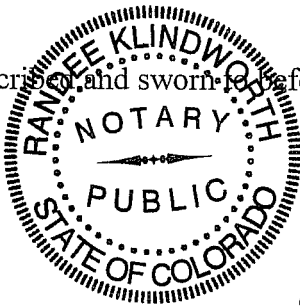
14
15 I, William Levis, Director, do hereby state that the factual statements contained in
16 the within Agreement Filing for Approval of Negotiated Amendment and attachments,
17 are true, accurate, complete and correct to the best of my knowledge and belief under
18 penalty of perjury.

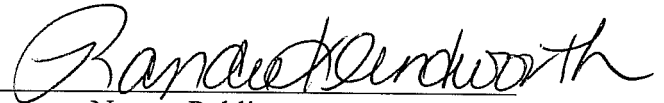
19 Dated: July 30, 2004



20 William Levis
21 Director, Western Public Policy

22
23 Subscribed, and sworn to before me this 30th day of July, 2004, by William Levis.



24
25 
26 Notary Public
27

28
29 **CERTIFICATE OF SERVICE**

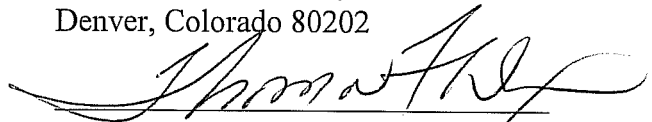
MY COMMISSION EXPIRES 11/18/2007

30
31 **I HEREBY CERTIFY THAT I served a true and exact copy of the within**
32 Agreement Filing for Approval of Negotiated Amendment upon the following either by
33 hand delivery, first class mail or e-mail as stated below:
34

35
36 Thomas Dethlefs, Esq.
37 Qwest Corporation
38 1801 California Street, #4900
39 Denver, Colorado 80202

Todd Lundy, Esq.
Qwest Services Corporation
1801 California Street, #4900
Denver, Colorado 80202

40
41 Dated: July 30, 2004



**AMENDMENT TO INTERCONNECTION AGREEMENT FOR ELIMINATION OF UNE-P AND
IMPLEMENTATION OF BATCH HOT CUT PROCESS AND DISCOUNTS
between
Qwest Corporation and MCImetro Access Transmission Services, LLC
for the State of South Dakota**

This Agreement is entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and MCImetro Access Transmission Services, LLC ("MCI") effective as of the Effective Date, defined below. Qwest and MCI shall be known jointly as the "Parties".

RECITALS

WHEREAS, MCI adopted Qwest's statement of generally available terms as its interconnection agreement (the "ICA") for services in the state of South Dakota; and

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

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

WHEREAS such UNE-P arrangements were previously obtained by MCI under the terms and conditions of certain interconnection agreements including without limitation in certain states Qwest's statement of generally available terms;

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

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

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

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1.0 – Definitions

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

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

Section 2.0 – General Terms and Conditions

2.1 Effective Date. This Amendment shall become effective on July 16, 2004 (“Effective Date”).

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

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

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

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

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

2.7 Entire Agreement. This Amendment (including all Exhibits) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum

of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Amendment.

Section 3.0 – Batch Hot Cut Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1 Agreement Not to Order. During the term of this Agreement Qwest shall not offer or provide to MCI, and MCI shall not order or purchase from Qwest, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of the unbundled network element platform ("UNE-P"), out of its

existing interconnection agreement(s) with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. §§251 and 252 that MCI or one of its affiliates may in the future enter into with Qwest and MCI waives any right under applicable law in connection therewith. Notwithstanding the foregoing, nothing in this Section shall prevent Qwest from offering or providing QPP™ services to MCI or MCI from ordering or purchasing QPP™ services from Qwest. The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on MCI or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of material breach by MCI).

Section 5.0 Other Terms and Conditions of Interconnection Agreements

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

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

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

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

MCI metro Access Transmission Services, LLC

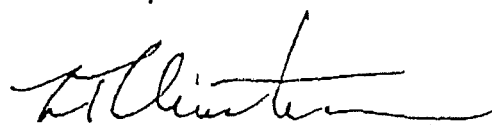
Signature

Name Printed/Typed

Title

Date

Qwest Corporation



Signature

L. T. Christensen

Name Printed/Typed

Director – Interconnection Agreements

Title

7/16/04

Date

existing interconnection agreement(s) with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. §§251 and 252 that MCI or one of its affiliates may in the future enter into with Qwest and MCI waives any right under applicable law in connection therewith. Notwithstanding the foregoing, nothing in this Section shall prevent Qwest from offering or providing QPP™ services to MCI or MCI from ordering or purchasing QPP™ services from Qwest. The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on MCI or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of material breach by MCI).

Section 5.0 Other Terms and Conditions of Interconnection Agreements

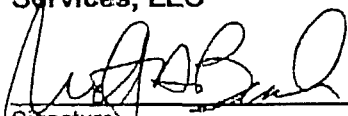
5.1 Other Interconnection Terms. This Amendment is not intended to alter, adjust or extend existing interconnection arrangements between Qwest and MCI except as expressly set forth herein and all such other interconnection arrangements and related terms and conditions shall remain in full force and effect.

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

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

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

MCImetro Access Transmission Services, LLC


Signature

MICHAEL A. BISACK
Name Printed/Typed

VICE PRESIDENT
Title

7/16/04
Date

Qwest Corporation

Signature

L. T. Christensen
Name Printed/Typed

Director – Interconnection Agreements
Title

Date

Attachment A: Batch Hot Cut Process

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

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

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

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

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

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

Qwest will complete provisioning of the loops associated with a particular batch between 3:00 a.m. and 11:00 a.m. local time on the due date.

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

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

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

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

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

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

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

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

completion time on a line-by-line basis. If MCI is interested in capturing the exact moment the conversion work is completed, MCI's current switch should have the capability to capture ("trap") the conversion and issue and request to have the subscription submitted for number porting.

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

QWEST MASTER SERVICES AGREEMENT

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

QWEST CORPORATION:

By: [Signature]
 [Name]: Steven Hansen
 [Title]: Director
 Date: July 16, 2004

CLEC:

MCI Metro Access Transmission Services LLC,
 A Delaware limited liability company

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

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

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

To MCI:
22001 Loudon County Parkway, Ste. G2-3-614
Ashburn VA 20147
 Phone #: 703-886-1918
 Facsimile #: 703-886-0118
 E-mail: peter.h.reynolds@mci.com
 Attention: Peter H. Reynolds, Dir., Nat'l Carrier Contracts

With copy to: Qwest
 c/o 1801 California Street, Suite 4900
 Denver, Colorado 80202
 Facsimile #: 1-303-295-6973
 Attention: Corporate Counsel, Wholesale
 Reference: MSA for Qwest Platform Plus Service

MCI
 Chief Network Counsel
 Bldg. E1-3-501
 22001 Loudoun County Parkway
 Ashburn, Virginia, 20147 (Facsimile (703) 886-4399)

APPLICABLE SERVICES:

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

 x Exhibit 1 - Qwest Platform Plus Service

APPLICABLE STATES:

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

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

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

QWEST MASTER SERVICES AGREEMENT

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

QWEST CORPORATION:

By: _____
 [Name]: Roland Thornton
 [Title]: Vice President
 Date: July 16, 2004

CLEC:

MCImetro Access Transmission Services LLC,
 A Delaware limited liability company
 By: *Wayne E. Huyard* on behalf of
 [Name]: Wayne E. Huyard
 [Title]: President, U.S. Sales and Service
 Date: July 16, 2004

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

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

To MCI:
22001 Loudoun County Parkway, Ste. G2-3-614
Ashburn VA 20147
Phone #: 703-886-1918
Facsimile #: 703-886-0118
E-mail: peter.h.reynolds@mci.com
Attention: Peter H. Reynolds, Dir., Nat'l Carrier Contracts

With copy to: Qwest
 c/o 1801 California Street, Suite 4900
 Denver, Colorado 80202
 Facsimile #: 1-303-295-6973
 Attention: Corporate Counsel, Wholesale
 Reference: MSA for Qwest Platform Plus Service

MCI
 Chief Network Counsel
 Bldg. E1-3-501
 22001 Loudoun County Parkway
 Ashburn, Virginia, 20147 (Facsimile (703) 886-4399)

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- X South Dakota
- X Utah
- X Washington
- X Wyoming

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

QWEST MASTER SERVICES AGREEMENT

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

2. **Effective Date.** This Agreement shall become effective on July 16, 2004 ("Effective Date").

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

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

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

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

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date regarding Qwest's obligation under Section 271 of the Act to continue to provide certain Network Elements ("Existing Rules"). Nothing in this Agreement shall be deemed an admission by Qwest or MCI

concerning the interpretation or effect of the Existing Rules or an admission by Qwest or MCI that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or MCI from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

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

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

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

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

6. **Financial Terms.**

Rates and Terms

6.1 Each attached Service Exhibit specifies the description, terms, and conditions specific to that Network Element or service. The

QWEST MASTER SERVICES AGREEMENT

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

Taxes, Fees, and other Governmental Impositions

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

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

7. Intellectual Property.

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal rules and regulations relating to the Network Elements or service provided under this Agreement, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

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

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

7.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.

7.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the services are in any way associated with or originated from the other

QWEST MASTER SERVICES AGREEMENT

Party or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements and services it uses to provide service to its End User Customers, provided it does not represent the Network Elements and services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates.

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

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

8. Financial Responsibility, Payment and Security.

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

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

8.3 Disconnection. Qwest may disconnect any and all relevant Network Elements and services provided under this Agreement for failure by MCI to make full payment for such Network Elements or services, less any disputed amount as provided for in this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar Days following the payment due date provided that Qwest has first notified MCI in writing at least thirty (30) days prior to disconnecting the relevant services. MCI will pay the applicable reconnect charge set forth in the Rate Sheet required to reconnect Network Elements and services for each End User Customer disconnected pursuant to this paragraph. In case of such

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

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

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

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

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payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

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

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

8.6 **Interest on Deposits.** Any interest earned on cash deposits shall be credited to MCI in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits shall not be deemed subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to MCI's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by MCI. Upon a material change in financial standing, MCI may request and Qwest will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve MCI from any requirements of this Agreement.

8.7 **Late Payment Penalty.** If any portion of the payment is received by Qwest after the payment due date as set forth above, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment penalty shall be due to Qwest. The late payment penalty shall be the portion of the payment not received by the payment due date multiplied by a late factor. The late factor shall be the lesser of: (1) The highest interest rate (in

decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the MCI actually makes the payment to the Company, or (2) 0.000407 per day, compounded daily for the number of days from the payment due date to and including the date that the MCI actually makes the payment to Qwest.

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

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

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

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

11. **Default and Breach**

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

12. **Limitation of Liability.**

12.1 To the extent the Agreement or an Exhibit contains an express remedy in the form of a quality of service credit or other liquidated damages in connection with services provided by Qwest under this Agreement or for a failure to provide such services, such credit shall be deemed to be MCI's sole remedy under this Agreement

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for losses, damages, or other claims related to or connected with the events giving rise to the claim for quality of service credit.

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

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

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

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

13. Indemnity.

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

13.1.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

13.1.2 In the case of claims or loss alleged or incurred by an End User Customer of either Party arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying service was provided or Network Element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's

End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.

13.2 The indemnification provided herein shall be conditioned upon:

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

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

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

14. Limited Warranties.

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

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

15. Relationship. Except to the limited extent expressly provided in this Agreement: (i) neither Party shall have the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other or otherwise act on the other's

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behalf; and (ii) the relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship, or franchise.

16. Assignment or Sale.

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

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

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

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

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

21. Confidentiality.

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

information is disclosed. The receiving Party shall from that time forward, treat such information as Proprietary Information.

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

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

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

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

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

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

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

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

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

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

25. **Force Majeure.** Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

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

27. **Dispute Resolution.**

27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 27 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and MCI arising out of this Agreement or its breach. Each Party

reserves its rights to resort to any forum with competent jurisdiction. Nothing in this Section 23 shall limit the right of either Qwest or MCI, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 27. Once a decision is reached by the arbitrator, however, such decision shall supersede any provisional remedy.

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

27.3 If the director level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), then the Parties shall in good faith attempt to resolve the Dispute through vice-presidential representatives. If the vice-presidential representatives are unable to resolve the Dispute within thirty (30) Calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), then either Party may request that the Dispute be settled by arbitration. If either Party requests arbitration, the other Party shall be required to comply with that request and both Parties shall submit to binding arbitration of the Dispute as described in this Section. Notwithstanding the foregoing escalation timeframes, a Party may request that the Dispute of the type described in Section 27.3.1, below, be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the Telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver, Colorado metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party that sends the Resolution Request must notify the Secretary of the FCC of the arbitration proceeding within forty-eight (48) hours of the determination to arbitrate.

27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide

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

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

27.3.3 Arbitrator's Decision

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

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

27.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 21 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide fifteen (15) calendar Days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery

shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

27.4 Reserved.

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

27.6 Reserved.

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

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

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

29. Authorization. Each Party represents and warrants that: (i) the full legal name of the legal entity intended to provide and receive the benefits and services under this Agreement is accurately set forth herein; (ii) the person signing this Agreement has been duly authorized to execute this Agreement on that Party's behalf; and (iii) the execution hereof is not in conflict with law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected. Each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

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

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

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

31.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage, including coverage for independent contractor's protection (required if any work will be

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subcontracted), products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

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

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

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

33. Entire Agreement.

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

34. Proof of Authorization.

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

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

35. General Terms for Network Elements

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

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

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

35.4 Network Security.

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

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

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

35.4.4 Qwest shall not be liable for any losses, damages or other claims, including, but not limited to, uncollectible or unbillable revenues, resulting from accidental, erroneous, malicious, fraudulent or otherwise unauthorized use of services or facilities ("Unauthorized Use"), whether or not such Unauthorized Use could have been reasonably prevented by Qwest, except to the extent Qwest has been

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notified in advance by MCI of the existence of such Unauthorized Use, and fails to take commercially reasonable steps to assist in stopping or preventing such activity.

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

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

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

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

36. Responsibility For Environmental Contamination

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

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

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ADDENDUM 1 DEFINITIONS:

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

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

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

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

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

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

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

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

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

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

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

"Confidential Information" means information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary". Confidential information does not include information that: a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; b) is or becomes publicly known through no wrongful act of the receiving Party; c) is rightfully received from a third Person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; d) is independently developed without reference to or use of Confidential Information of the other Party; e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; f) is approved for release by written authorization of the disclosing Party; g) is required to be disclosed by the receiving Party

pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

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

"Day" means calendar days unless otherwise specified.

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

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

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

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

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

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

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

"FCC" means the Federal Communications Commission.

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

"Line Information Database" or "LIDB" stores various telephone line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The operator services system accesses LIDB data to provide originating line (calling number), Billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, Billing or service restrictions and the sub-account information to be included on the call's Billing record. Telcordia's GR-446-CORE defines the interface between the administration system and LIDB including specific message formats (Telcordia's TR-NWP-000029, Section 10).

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

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

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

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

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

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

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

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

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

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

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

"POTS" means plain old telephone service.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of Switches, transmission

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equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

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

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

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

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

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

1.3 Local Switching

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

1.1 General QPP™ Service Description

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

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

1.2 Combination of QPP™ Network Elements with Loops

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

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

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

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

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

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

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

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

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

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

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

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

1.4 Vertical Features and Ancillary Functions and Services

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

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

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

1.4.3 ICNAM and LIDB. Qwest will provide MCI with non-discriminatory access to Qwest's LIDB database and ICNAM database as part of the delivery of QPP™ service.

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

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

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

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

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

1.4.5.3 Qwest shall exercise reasonable efforts to provide accurate and complete LIDB and ICNAM information. The information is provided on an as-is basis with all faults. Qwest does not warrant or guarantee the correctness or the completeness of such information;

however, Qwest will access the same database for MCI's QPP™ End User Customers as Qwest accesses for its End User Customers. In no event shall Qwest have any liability for system outage or inaccessibility or for losses arising from the authorized use of the data by MCI.

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

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

1.5 Shared Transport

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

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

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

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

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

1.6 QPP™ Service Arrangement Descriptions

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

1.6.2 QPP™ Centrex is available to MCI for MCI's business end users. QPP™ Centrex services include Centrex 21,

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Centrex Plus, and Centron and is offered in the following combination: Analog Line Side Port and Shared Transport provided pursuant to this Agreement combined with an Analog - 2 Wire Voice Grade Loop provided pursuant to MCI's ICAs.

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

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

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

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

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

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

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

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

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

2.0 Additional Terms and Conditions and Service Features

2.1 QPP™ services will be available only in Qwest's Incumbent Local Exchange Carrier service area within its fourteen-state region. QPP™ services will not be subject to any line limitations such as the Zone 1 four-line MSA restriction for unbundled switching. Qwest does not warrant the availability of facilities at any particular serving wire center,

provided that Qwest warrants that MCI shall be able to convert all MCI UNE-P End User Customers as of the Effective Date to the QPP™ service. QPP™ services will not be available if facilities are not available. Notwithstanding the foregoing, Qwest represents and warrants that it will not otherwise restrict facilities eligible to provide QPP™ service and that any and all facilities that would otherwise be available for retail service to a Qwest End User Customer will be considered eligible for use by MCI for QPP™ service to serve that same End User Customer.

2.2 Reserved.

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

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

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

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

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

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

2.4.1 MCI shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its End User Customers for InterLATA and IntraLATA services. MCI shall follow all Applicable Laws, rules and regulations with respect to PIC changes and Qwest disclaims any liability for MCI's improper PIC change requests.

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

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- 2.5 Access to 911/E911 emergency services for MCI's End User Customers shall be available pursuant to the terms and conditions of MCI's ICAs. If Qwest becomes no longer obligated to provide access to 911/E911 emergency services pursuant to 47 U.S.C. §251, then Qwest shall thereafter provide such services under this Agreement with respect to all MCI QPP™ service End User Customers and new QPP service End User Customers, to the same degree and extent that such 911/E911 emergency services were provided by Qwest prior to the elimination of 911/E911 emergency services as an obligation under 47 U.S.C. §251.
- 2.6 Reserved.
- 2.7 Qwest AIN, Qwest Voice Messaging Services and Qwest DSL (dependent upon service compatibility and end office availability) are offered on a commercial basis and may be purchased with QPP™ at the rates set forth in the attached Rate Sheet. Retail promotions may not be combined with QPP™. Non-recurring charges associated with Qwest DSL™ are not subject to discount. MCI may order new or retain existing Qwest DSL service for End User Customers when utilizing QPP™-POTS, QPP™-Centrex, and QPP™-PBX (analog, non-DID trunks only) combinations, where Technically Feasible. The price for Qwest DSL provided with QPP™ service is included in the Rate Sheet to this Agreement.
- 2.8 Qwest DSL host service is not available with QPP™ service.
- 2.9 If Qwest develops and deploys new local switch features for its End User Customers, those switch features will be available in the same areas and subject to the same limitations with QPP™ service. The rates to be charged MCI for such new local switch features will be negotiated but will not in any case be higher than the retail rate Qwest charges.
- 2.10 MCI shall have the ability to combine the QPP™ service with MCI's voicemail product and stutter dial tone.
- 3.0 Rates and Charges
- 3.1 The recurring ("MRC") and nonrecurring ("NRC") rates for QPP™ services and all applicable usage-based rates and miscellaneous charges (other than applicable intercarrier compensation charges such as access charges and reciprocal compensation and MRCs and NRCs for elements and services provided pursuant to MCI's ICAs) are set forth in the attached Rate Sheets. The rates for QPP™ services set forth in the attached Rate Sheets will be in addition to the applicable rates for elements and services provided under MCI's ICAs.
- 3.2 The loop element combined with a QPP™ service will be provided pursuant to MCI's ICAs with Qwest at the rates set forth in those ICAs. To the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state (after giving effect to the QPP™ Port Rate Increases as adjusted for any applicable discount pursuant to Section 3.3 of this Service Exhibit) remains constant. The corresponding adjustment will be applied against the Port Rate Increases for the applicable state negotiated as a part of this Agreement and contained in the Rate Sheet. In no event shall any downward adjustment for a particular state under this section result in QPP™ Port Rate Increase of less than \$1.00, nor shall any upward adjustment for a particular state result in a QPP™ Port Rate Increase of more than twice the scheduled increase. If the monthly recurring rate for the loop is modified by a shift in zone designation the parties shall use the difference in the statewide average loop rate as the basis for such adjustment, if any. Nothing in this Agreement shall affect the rates or any other terms and conditions for loops set forth in MCI's ICAs with Qwest. For purposes of this Agreement, the Port Rate Increases refer to the increases in the Port rate reflecting market pricing on the attached Rate Sheets.
- Illustration 1: If the initial loop rate is \$15, the initial Port rate is \$3, and the scheduled Port Rate Increase is \$2 for residential and \$3 for business, an increase in the loop rate of \$1.50 to \$16.50 will result in a corresponding reduction of the Port Rate Increase for residential to \$1.00 (calculated: \$2.00 - \$1.50, but in no event less than \$1.00) and a reduction of the Port Rate Increase for business of \$1.50 (calculated: \$3.00 - \$1.50).
- Illustration 2: If the initial loop rate is \$15, the initial Port rate is \$3, and the scheduled Port Rate Increase is \$2 for residential and \$3 for business, a decrease in the loop rate of \$2.50 to \$12.50 will result in a corresponding upward adjustment of the Port Rate Increase for residential to \$4.00 (calculated: \$2.00 plus \$2.50, but in no event greater than 2 X \$2.00) and an upward adjustment of the Port Rate Increase for business to \$5.50 (calculated: \$3.00 plus \$2.50).
- 3.3 Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to MCI's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™ Port Rate Increase (as the same may be subsequently adjusted under Section 3.2) on January 1, 2005, January 1, 2006 and January 1, 2007. If the Batch Hot Cut Process has not been implemented in a particular state such that Qwest is not able to process Batch Hot Cuts in that state by December 31, 2004, the QPP™ Port Rate Increases for that state will not go into effect until such time as Qwest is able to process Batch Hot Cut orders in that state, and in the event of any such delay in the effective date of the QPP™ Port Rate Increases, there shall be no subsequent true up of the QPP™ Port Rate Increases. If the number of MCI's QPP™ lines as of October 31, 2005 equals or exceeds 90% of the sum of MCI's QPP™ and UNE-P lines as of October 31, 2004, MCI will be entitled to a discount off of the monthly recurring switch port rate applicable during calendar year 2006 equal to 10% of the QPP Port Rate Increases that take effect January 1, 2006. If the number of MCI's QPP™ lines as of October 31, 2006 equals or exceeds 90% of the sum of MCI's QPP™ and UNE-P lines as of October 31, 2005, MCI will be entitled to a discount off of the monthly recurring switch port rate applicable during calendar year 2007 equal to 10% of the QPP Port Rate Increases that take effect January 1, 2007. For purposes of this section, the number of QPP™ lines and the sum of QPP™ service and UNE-P lines shall be calculated on a regionwide basis that includes all states in which this Agreement is in effect.
- 3.4 MCI shall be responsible for Billing its End User Customers served via QPP™ for all Miscellaneous Charges and surcharges required of MCI by statute, regulation or otherwise required.

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- 3.5 MCI shall pay Qwest the PIC change charge associated with MCI End User Customer changes of InterLATA or IntraLATA Carriers. Any change in MCI's End User Customers' InterLATA or IntraLATA Carrier must be requested by MCI on behalf of its End User Customer.
- 3.6 If an End User Customer is served by MCI through a QPP™ service, Qwest will not charge, assess, or collect Switched Access charges for InterLATA or IntraLATA calls originating or terminating from that End User Customer's phone.
- 3.7 Qwest shall have a reasonable amount of time to implement system or other changes necessary to bill MCI for rates or charges associated with QPP™ services. Such system or other changes must be completed and operational no later than December 31, 2004.
- 3.8 QPP™ services have a one month minimum service period requirement for each MCI End User Customer. The one month minimum service period is the period of time that MCI is required to pay 100% of the monthly recurring price for the service even if MCI does not retain service for the entire month. QPP™ services are billed month to month and shall after the one month minimum service period is satisfied be pro-rated for partial months based on the number of days service was provided.
- 3.9 To receive QPP™ Residential rates after December 31, 2004, MCI must identify residential end users by working telephone number (WTN) via LSR by the later of (a) ninety (90) days after the Effective Date and (b) January 1, 2005. Qwest will not assess a nonrecurring charge for the processing of this records order to identify the installed base of residential end users. Following submission by MCI of such LSRs, MCI and Qwest shall cooperate to ensure that appropriate updates are reflected in Qwest's billing systems. To the extent rates are not correctly applied during the first ninety (90) days after January 1, 2005, Qwest shall credit any overpayments to MCI in a commercially reasonable manner. QPP™ Business rates will apply to all WTNs not specifically identified as QPP™ Residential. Changes to the LSR process intended to implement the residential identifier for new orders going forward shall be implemented through the Change Management Process. If the billing and ordering software for QPP service is not available for commercial use on or before December 31, 2004, Qwest and MCI shall true-up charges monthly to reflect the pricing for Qwest QPP service.
- 3.10 The subsequent order charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing or changing features, and other similar requests.
- 4.0 **Systems and Interfaces**
- 4.1 Qwest and MCI shall continue to support use of existing UNE-P OSS interfaces and current OSS business rules for QPP™ (including without limitation electronic ordering and flowthrough applicable to UNE-P on June 14, 2004) as the same may evolve over time.
- 4.2 QPP™ products and services are ordered via an LSR as described in the PCAT. Products and Services Ordering are found on the Qwest wholesale website.
- 4.3 Prior to placing an order on behalf of each End User Customer, MCI shall be responsible for obtaining and have in its possession a Proof of Authorization as set forth in this Agreement.
- 4.4 When Qwest or another provider of choice, at the End User Customer's request, orders the discontinuance of the End User Customer's existing service with MCI, Qwest will render its closing bill to MCI effective with the disconnection. Qwest will notify MCI by FAX, OSS interface, or other agreed upon processes when an End User Customer moves to Qwest or another service provider. Qwest shall not provide MCI or Qwest retail personnel with the name of the other service provider selected by the End User Customer.
- 4.5 MCI shall provide Qwest and Qwest shall provide MCI with points of contact for order entry, problem resolution, repair, and in the event special attention is required on service request.
- 5.0 **Billing**
- Qwest shall provide MCI, on a monthly basis, within seven to ten (7 - 10) calendar days of the last day of the most recent Billing period, in an agreed upon standard electronic format, Billing information including (1) a summary bill, and (2) individual End User Customer sub-account information. To the extent MCI needs additional or different billing information in order to properly bill its End Users or other Carriers (including without limitation Qwest), Qwest shall work with MCI in good faith to deliver such information.
- 6.0 **Maintenance and Repair**
- 6.1 Qwest will maintain facilities and equipment that comprise the QPP™ service provided to MCI. MCI or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the written consent of Qwest.
- 6.2 Qwest shall provide general repair and maintenance services on its facilities, including those facilities supporting QPP™ services purchased by MCI. Without limiting the generality of the foregoing, Qwest shall repair and restore any equipment or any other maintainable component that may adversely impact MCI's use of QPP™ service. Qwest and MCI shall cooperate with each other to implement procedures and processes for handling service-affecting events. There shall be no charge for the services provided under this section except as set forth in the Rate Sheet.
- 7.0 **Performance Measures and Reporting, Performance Targets and Service Credits**
- 7.1 Each party shall provide suitably qualified personnel to perform its obligations under this Agreement and all QPP™ services hereunder in a timely and efficient manner with diligence and care, consistent with the professional standards of practice in the industry, and in conformance with all applicable laws and regulations. The QPP™ service attributes and process enhancements are not subject to the Change Management Process ("CMP"). MCI proposed changes to QPP™ service attributes and process enhancements will be communicated through the standard account interfaces. Change requests common to shared

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systems and processes subject to CMP will continue to be addressed via the CMP procedures.

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

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

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

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

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

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

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

Exclusions:

- LSRs involving individual case basis (ICB) handling based on quantities of lines, as specified in the "Performance Targets" section below, or service/request types, deemed to be projects.
- Hours on Weekends and holidays. (Except for FOC-1A, which only excludes hours outside the scheduled system up time.)
- LSRs with CLEC-requested FOC arrangements different from standard FOC arrangements.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition. This generally means that the record is missing data critical to the calculation such that performing the calculation is impossible. Qwest considers it a source data error. If a data element needed for a calculation is missing from the record that came from source operational system, then it is excluded. For example, a completed STATE field is required to assign a given record to a state's calculation. If the STATE field is blank, the record is retained in the ad hoc data files but the record is excluded from that state's calculations. Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

Product Reporting: QPP-POTS	Performance Target:	
	<u>QPP-POTS</u>	FOC-1A: 95% within 20 minutes FOC-1B: 95% within standard FOC intervals (specified below)
	<u>Standard FOC Intervals</u>	
	Product Group <small>NOTE 1</small>	FOC Interval
	QPP-POTS (1-39 lines)	FOC-1A: 20 minutes FOC-1B: 24 hrs
Availability: Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.		
	Notes: LSRs with quantities above the highest number specified for each product type are considered ICB.	

ICM-1 - Installation Commitments Met

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

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

OII-1 - Order Installation Interval

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

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

OOS24-1 - Out of Service Cleared within 24 Hours

Purpose:

Evaluates timeliness of repair for specified services, focusing on trouble reports where the out-of-service trouble reports were cleared within the standard estimate for specified services (i.e., 24 hours for out-of-service conditions).

Description:

Measures the percentage of out of service trouble reports, involving specified services, that are cleared within 24 hours of receipt of trouble reports from CLECs or from retail customers.

- Includes all trouble reports, closed during the reporting period, which involve a specified service that is out-of-service (i.e., unable to place or receive calls), subject to exclusions specified below.
- Time measured is from date and time of receipt of trouble ticket to the date and time trouble is indicated as cleared.

Reporting Period: One month

Unit of Measure: Percent

Reporting:

Individual CLEC

Disaggregation Reporting:

- Regional level.
- Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving:
OOS24-1A Dispatches (Includes within MSA and outside MSA); and
OOS24-1B No dispatches.
 - Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations:
OOS24-1C Interval Zone 1 and Interval Zone 2 areas.

Formula:

$$\left[\frac{\text{((Number of Out of Service Trouble Reports closed in the reporting period that are cleared within 24 hours))}}{\text{(Total Number of Out of Service Trouble Reports closed in the reporting period)}} \right] \times 100$$

Exclusions:

- Trouble reports coded as follows:
 - For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
 - For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE).
- Subsequent trouble reports of any trouble before the original trouble report is closed.
- Information tickets generated for internal Qwest system/network monitoring purposes.
- Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation".
- For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay.
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.
- Records involving official company services.
- Records with invalid trouble receipt dates.
- Records with invalid cleared or closed dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

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

MTTR-1 - Mean Time to Restore

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

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

TR-1 - Trouble Rate

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

Product Reporting:	Performance Target:
MSA Type:	
<ul style="list-style-type: none"> • QPP-POTS 	Diagnostic
Zone Type:	
•	
Availability:	Notes:
<p>Performance can be measured beginning in August 2004 (to be reflected on September 2004 reporting) or the first full month of QPP service (for the following month's reporting), whichever is later.</p>	

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		USOC	Recurring	Non-Recurring	Notes
109.8	Shared Transport Purchased As Part of QPP™				
109.8.1	Mass Market				
109.8.1.1	QPP™ Residential and Business (Per MOU)		\$0.00138786		
109.8.1.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per line/trunk)	UGUFM	\$0.44		
109.11	Local Switching Purchased As Part of QPP™				
109.11.1	Mass Market Switching				
109.11.1.1	Ports				
109.11.1.1.1	Ports, Effective through December 31, 2004				
109.11.1.1.1.1	Analog Port		\$1.84		
109.11.1.1.1.2	Analog Port, Residential end user credit		\$0.00		1
109.11.1.1.1.3	Digital Port (Supporting BRI ISDN)		\$11.65		
109.11.1.1.1.4	PBX DID Port		\$4.10		
109.11.1.1.2	Ports, Effective January 1, 2005 through December 31, 2005				
109.11.1.1.2.1	Analog Port		\$4.54		
109.11.1.1.2.2	Analog Port, Residential end user credit		(\$1.53)		1
109.11.1.1.2.3	Digital Port (Supporting BRI ISDN)		\$14.35		
109.11.1.1.2.4	PBX DID Port		\$6.80		
109.11.1.1.3	Ports, Effective January 01, 2006 through December 31, 2006, if Incentive thresholds ARE met				
109.11.1.1.3.1	Analog Port		\$6.19		
109.11.1.1.3.2	Analog Port, Residential end user credit		(\$2.93)		1
109.11.1.1.3.3	Digital Port (Supporting BRI ISDN)		\$16.00		
109.11.1.1.3.4	PBX DID Port		\$8.45		
109.11.1.1.4	Ports, Effective January 01, 2006 through December 31, 2006, if Incentive thresholds ARE NOT met				
109.11.1.1.4.1	Analog Port		\$6.67		
109.11.1.1.4.2	Analog Port, Residential end user credit		(\$3.26)		1
109.11.1.1.4.3	Digital Port (Supporting BRI ISDN)		\$16.48		
109.11.1.1.4.4	PBX DID Port		\$8.93		
109.11.1.1.5	Ports, Effective January 01, 2007 through term, if Incentive thresholds ARE met				
109.11.1.1.5.1	Analog Port		\$8.10		
109.11.1.1.5.2	Analog Port, Residential end user credit		(\$4.64)		1
109.11.1.1.5.3	Digital Port (Supporting BRI ISDN)		\$17.91		
109.11.1.1.5.4	PBX DID Port		\$10.36		
109.11.1.1.6	Ports, Effective January 01, 2007 through term, if Incentive thresholds ARE NOT met				
109.11.1.1.6.1	Analog Port		\$8.80		
109.11.1.1.6.2	Analog Port, Residential end user credit		(\$5.16)		1
109.11.1.1.6.3	Digital Port (Supporting BRI ISDN)		\$18.61		
109.11.1.1.6.4	PBX DID Port		\$11.06		
109.11.1.2	Local Switch Usage				
109.11.1.2.1	QPP™ Residential and Business (Per MOU)		\$0.00		
109.11.1.2.2	QPP™ Centrex, ISDN BRI, PAL, and PBX Analog Trunks (Per Line/Trunk)	UGUST	\$0.59		
109.11.1.3	Switch Features				2, 3
109.11.1.3.1	Account Codes - per system	AZ8PS		\$81.28	
109.11.1.3.2	Attendant Access Line - per station line	DZR		\$1.17	
109.11.1.3.3	Audible Message Waiting	MGN, MWW		\$1.03	
109.11.1.3.4	Authorization Codes - per system	AFYPS		\$243.08	
109.11.1.3.5	Automatic Line, per station line	ETVPB		\$0.35	
109.11.1.3.6	Automatic Route Selection - Common Equip. per system	F5GPG		\$2,132.83	
109.11.1.3.7	Call Drop	NA-FID		\$0.35	
109.11.1.3.8	Call Exclusion - Automatic	NXB (ISDN)		\$1.03	
109.11.1.3.9	Call Exclusion - Manual	NA-FID (ISDN)		\$0.68	
109.11.1.3.10	Call Forwarding Incoming Only	69B1X		\$38.52	
109.11.1.3.11	Call Forwarding: Busy Line/Don't Answer Programmable Svc. Establishment	SEPFA		\$38.52	
109.11.1.3.12	Call Waiting Indication - per timing state	WUT		\$1.03	
109.11.1.3.13	CENTREX Common Equipment	HYE, HYS		\$1,225.34	
109.11.1.3.14	CF Don't answer/CF busy customer Programmable - per Line	FSW		\$1.03	
109.11.1.3.15	CLASS - Call Trace, per Occurrence	NO USOC		1.48	
109.11.1.3.16	CLASS - Continuous Redial	NSS		\$1.28	
109.11.1.3.17	CLASS - Last Call Return	NSQ		\$1.29	
109.11.1.3.18	CLASS - Priority Calling	NSK		\$1.22	
109.11.1.3.19	CLASS - Selective Call Forwarding	NCE		\$1.28	
109.11.1.3.20	CLASS - Selective Call Rejection	NSY		\$1.22	
109.11.1.3.21	CMS - PACKET CONTROL CAPABILITY, PER SYSTEM	PTGPS		\$493.50	
109.11.1.3.22	CMS - SYSTEM ESTABLISHMENT - INITIAL INSTALLATION	MB5XX		\$987.00	
109.11.1.3.23	CMS - SYSTEM ESTABLISHMENT - SUBSEQUENT INSTALLATION	CPVVO		\$493.50	
109.11.1.3.24	Conference Calling - Meet Me	MJPK		\$43.15	
109.11.1.3.25	Conference Calling - Preset	MO9PK		\$43.15	
109.11.1.3.26	Conference Calling - Station Dial	GVT		\$46.36	
109.11.1.3.27	Dir Sta Sel/Busy Lamp Fld per arrangement	BUD		\$0.35	

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		USOC	Recurring	Non-Recurring	Notes
109.11.1.3.28	Directed Call Pickup with Barge-in	6MD		\$20.48	
109.11.1.3.29	Directed Call Pickup without Barge-in	69D		\$20.48	
109.11.1.3.30	Distinctive Ring/Distinctive Call Waiting	RNN		\$40.95	
109.11.1.3.31	Expensive Route Warning Tone- per system	AQWPS		\$73.05	
109.11.1.3.32	Facility Restriction Level - per system	FRKPS		\$44.94	
109.11.1.3.33	Group Intercom- Per Line	GCN		\$0.46	
109.11.1.3.34	Hot Line - per line	HLA, HLN		\$1.03	
109.11.1.3.35	Hunting: Multiposition Hunt Queuing - per group	MH5		\$39.20	
109.11.1.3.36	Hunting: Multiposition with Announcement in Queue	MHW		\$39.20	
109.11.1.3.37	Hunting: Multiposition with Music in Queue	MOHPS		\$41.39	
109.11.1.3.38	ISDN Short Hunt	NHGGP		\$1.73	
109.11.1.3.39	Loudspeaker Paging - per trunk group	PTQPG		\$179.33	
109.11.1.3.40	Make Busy Arrangements - per group	A9AEX, P89		\$0.68	
109.11.1.3.41	Make Busy Arrangements - per line	MB1		\$0.68	
109.11.1.3.42	Message Center - per main station line	MFR		\$0.35	
109.11.1.3.43	Message Waiting Visual, per line	MV5		\$0.35	
109.11.1.3.44	Music On Hold - per system	MHPS		\$23.50	
109.11.1.3.45	Privacy Release, per station line	K7KPK		\$0.48	
109.11.1.3.46	Query Time, per station line	QT1PK		\$0.35	
109.11.1.3.47	SMDR-P - ARCHIVED DATA	SR7CX		\$180.10	
109.11.1.3.48	SMDR-P - SERVICE ESTABLISHMENT CHARGE, INITIAL INSTALLATION	SESP, SEPSR		\$344.67	
109.11.1.3.49	Station Camp-On Service - per main line, per line	CPK		\$0.35	
109.11.1.3.50	Time of Day Control for ARS - per system	ATBPS		\$127.82	
109.11.1.3.51	Time of Day NCOS Update	A4T		\$0.55	
109.11.1.3.52	Time of Day Routing - per line	ATBPS		\$0.52	
109.11.1.3.53	Trunk Verification from Designated Station	BVS		\$0.40	
109.11.1.3.54	UCD in hunt group - per line	MHM, H6U, NZT		\$0.68	
109.11.1.4 Other					
109.11.1.4.1	Custom Number			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.11.1.4.3	PBX DID Complex Translations Digits Outpulsed Change Signaling			\$14.59	
109.11.1.4.4	PBX DID Complex Translations Signaling Change			\$34.05	
109.11.1.4.5	PBX DID Block Compromise			\$25.89	
109.11.1.4.6	PBX DID Group of 20 Numbers			\$34.18	
109.11.1.4.7	PBX DID Reserve Sequential # Block			\$25.54	
109.11.1.4.8	PBX DID Reserve Non Sequential TN			\$23.84	
109.11.1.4.9	PBX DID NonSequential TN			\$35.87	
109.11.2 Subsequent Order Charge		NHCUU		\$13.78	4
109.11.3 Qwest Corporation (QC) IntraLATA Toll, LPIC 5123				See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.20 Miscellaneous Charges					5, 6
109.20.1 Non-Design					
109.20.1.1	Trouble Isolation Charge (TIC)	LTESX		See Maintenance of Service, Basic, First Interval	
109.20.2 Design					
109.20.2.1	Maintenance of Service				
109.20.2.1.1	Basic				
109.20.2.1.1.1	First Increment	MVWXX		See Maintenance of Service	
109.20.2.1.1.2	Each Additional Increment	MVW1X			
109.20.2.1.2	Overtime				
109.20.2.1.2.1	First Increment	MVWOX		See Maintenance of Service	
109.20.2.1.2.2	Each Additional Increment	MVW2X			
109.20.2.1.3	Premium				
109.20.2.1.3.1	First Increment	MVWPX		See Maintenance of Service	
109.20.2.1.3.2	Each Additional Increment	MVW3X			
109.20.2.2	Optional Testing (Additional Labor)				
109.20.2.2.1	Basic, First and Each Additional Increment	OTNBX		See Additional Labor - Other	
109.20.2.2.2	Overtime, First and Each Additional Increment	OTNOX			
109.20.2.2.3	Premium, First and Each Additional Increment	OTNPX			
109.20.2.3	Dispatch (Additional Dispatch - No trouble found)	VT6DC		See Additional Dispatch	
109.20.2.4	Dispatch for Maintenance of Service - No Trouble Found	VT6DM			
109.20.3 Design and Non-Design					
109.20.3.1	Trip Charge - Premises Visit Charge	No USOC		See Additional Dispatch	

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		USOC	Recurring	Non-Recurring	Notes
109.20.3.2	Premises Work Charge				
109.20.3.2.1	Basic				
109.20.3.2.1.1	First Increment	HRD11		See Additional Labor - Other	
109.20.3.2.1.2	Each Additional Increment	HRDA1			
109.20.3.2.2	Overtime				
109.20.3.2.2.1	First Increment	HRD12		See Additional Labor - Other	
109.20.3.2.2.2	Each Additional Increment	HRDA2			
109.20.3.2.3	Premium				
109.20.3.2.3.1	First Increment	HRD13		See Additional Labor - Other	
109.20.3.2.3.2	Each Additional Increment	HRDA3			
109.20.3.3	Date Change			\$48.14	
109.20.3.4	Desion Change			\$105.34	
109.20.3.5	Expedite Charge			ICB	7
109.20.3.6	Cancellation Charge			ICB	7
109.23	Qwest Platform Plus™ (QPP™)				
109.23.1	Conversion Nonrecurring Charges				
109.23.1.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.1.1.1	First Line (Mechanized)	URCCU		\$0.69	
109.23.1.1.2	Each Additional Line (Mechanized)	URCCY		\$0.14	
109.23.1.1.3	First Line (Manual)	URCCV		\$16.54	
109.23.1.1.4	Each Additional Line (Manual)	URCCZ		\$2.76	
109.23.1.2	QPP™ PBX DID Trunks				
109.23.1.2.1	First Trunk	URCCD		\$30.09	
109.23.1.2.2	Each Additional			\$2.82	
109.23.1.3	QPP™ ISDN BRI	URCCU			
109.23.1.3.1	First			\$31.97	
109.23.1.3.2	Each Additional			\$2.82	
109.23.2	Installation Nonrecurring Charges				
109.23.2.1	QPP™ Business, Centrex, PAL, and PBX Analog non-DID Trunks, Residential				
109.23.2.1.1	First Line (Mechanized)	NHCRA		\$56.44	
109.23.2.1.2	Each Additional Line (Mechanized)	NHCRC		\$16.19	
109.23.2.1.3	First Line (Manual)	NHCRB		\$63.78	
109.23.2.1.4	Each Additional Line (Manual)	NHCRD		\$18.81	
109.23.2.2	QPP™ Analog DID PBX Trunks			\$165.26	
109.23.2.3	QPP™ ISDN-BRI			\$317.33	
109.23.3	Qwest AIN Features			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.23.4	Qwest DSL			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount (which will be provided pursuant to terms and conditions in CLEC's ICA).	8
109.23.5	Qwest Voice Messaging Services			See Applicable Qwest Retail Tariff, Catalog or Price List less Discount	8
112.0	Operational Support Systems				
112.0.1	Develoments and Enhancements, per Order			No Charge at this time	7
112.0.2	Ongoing Maintenance, per Order			No Charge at this time	7
112.0.3	Daily Usage Records File, per Record			\$0.000441	

Notes

- Monthly Recurring credit applies to QPP™ Residential Services as set forth in Service Exhibit 1 to this Agreement.
- QPP™ service includes nondiscriminatory access to all vertical switch features that are loaded in Qwest's End Office Switch. See the PCAT for all compatible and available vertical switch features. Only vertical switch features with Non-Recurring, Recurring, or Per Occurrence charges are listed. Non-Recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Those vertical switch features not listed have a rate of \$0 for Monthly Recurring, Non-Recurring, or Per Occurrence charges.
- Qwest has provided USOCs for listed vertical switch features. Should MCI disagree with the association of USOC(s) and listed vertical switch feature descriptions, MCI and Qwest agree to convene by July 30, 2004 to negotiate corrections.
- The Subsequent Order Charge is applicable on a per order basis when changes are requested to existing service, including changing a telephone number, initiating or removing Suspension or Service, denying or restoring service, adding, removing, or changing features, and other similar requests.
- QPP™ ISDN BRI and PBX are "Design". Remaining QPP™ services are "Non-Design".
- All charges and increments shall be the same as the comparable charges and increments in each state SGAT.
- Qwest and MCI agree to negotiate a charge in good faith. The Parties agree that the charges are intended to allow Qwest to recover its relevant costs and will be an approved charge.

Qwest Platform Plus™ (QPP™) Rate Page - South Dakota

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

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

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

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

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

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

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

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

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

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

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

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of July 29, 2004 through August 4, 2004

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this report. Phone: 605-773-3201

CONSUMER COMPLAINTS

CT04-002 **In the Matter of the Complaint filed by Jerry Galloway on behalf of Bold Venture, LLC, Sioux Falls, South Dakota, against McLeodUSA Telecommunications Services, Inc. Regarding Over Billing for Services.**

Complainant's representative states that he signed an addendum to his contract on 10/19/00. Since that time he has been charged a per line rate that is over the contracted amount and he has been charged for features that according to the contract were to be included at no additional charge. The complainant seeks a refund of all monies paid to the respondent for services that were billed over the contracted amount.

Staff Analyst: Jim Mehlhaff
Staff Attorney: Karen E. Cremer
Date Docketed: 08/03/04
Intervention deadline: N/A

TELECOMMUNICATIONS

TC04-136 **In the Matter of the Request of West River Cooperative Telephone Company for Certification Regarding its Use of Federal Universal Service Support.**

On July 29, 2004, West River Cooperative Telephone Company (West River) provided information constituting West River's plan for the use of its federal universal service support and to otherwise verify that West River will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 07/29/04
Intervention Deadline: 08/20/04

TC04-137 **In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and McCook Cooperative Telephone Company.**

On July 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between McCook Cooperative Telephone Company and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties

to the Agreement no later than August 18, 2004. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 07/29/04
Initial Comments Due: 08/18/04

TC04-138 In the Matter of the Request of Kennebec Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On July 30, 2004, Kennebec Telephone Company, Inc. (Kennebec) provided information constituting Kennebec's plan for the use of its federal universal service support and to otherwise verify that Kennebec will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 07/30/04
Intervention Deadline: 08/20/04

TC04-139 In the Matter of the Request of Interstate Telecommunications Cooperative, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On July 30, 2004, Interstate Telecommunications Cooperative, Inc. (Interstate) provided information constituting Interstate's plan for the use of its federal universal service support and to otherwise verify that Interstate will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 07/30/04
Intervention Deadline: 08/20/04

TC04-140 In the Matter of the Request of Heartland Telecommunications Company of Iowa d/b/a Hickory Tech Corporation for Certification Regarding its Use of Federal Universal Service Support.

On August 2, 2004, Heartland Telecommunications Company of Iowa d/b/a Hickory Tech (Hickory Tech) provided information constituting Hickory Tech's plan for the use of its federal universal service support and to otherwise verify that Hickory Tech will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/02/04
Intervention Deadline: 08/20/04

TC04-141 In the Matter of the Request of Consolidated Telcom for Certification Regarding its Use of Federal Universal Service Support.

On August 2, 2004, Consolidated Telcom (Consolidated) provided information constituting Consolidated's plan for the use of its federal universal service support and to otherwise verify that Consolidated will use all federal universal service support received in a manner that is consistent with

the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/02/04
Intervention Deadline: 08/20/04

TC04-142 In the Matter of the Application of Intandem Communications Corp. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

On August 2, 2004, Intandem Communications Corp. filed an application for a Certificate of Authority to provide interexchange telecommunications services in South Dakota. The applicant seeks authority to operate as a reseller of intrastate telecommunications services on a statewide basis. The applicant intends to provide MTS, in-WATS, out-WATS, and calling card services throughout South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 08/02/04
Intervention Deadline: 08/20/04

TC04-143 In the Matter of the Filing for Approval of an Adoption Agreement between Qwest Corporation and Sancom, Inc. d/b/a Mitchell Telecom.

On August 2, 2004, the Commission received a Filing for Approval of an Adoption Agreement between Qwest Corporation and Sancom, Inc. d/b/a Mitchell Telecom. According to the parties, Sancom has chosen "to adopt, in its entirety, the terms and conditions of the Interconnection Agreement and any associated amendments, if applicable, between Sprint Communications Company, L.P. and Qwest Corporation that was approved by the Commission on February 25, 2004 in Docket No. TC04-002." Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the Agreement no later than August 23, 2004. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 08/02/04
Initial Comments Due: 08/23/04

TC04-144 In the Matter of the Filing for Approval of a Master Services Agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC.

On August 2, 2004, the Commission received a filing for approval of an Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts Amendment (Discounts Amendment) between Qwest Corporation (Qwest) and MCImetro Access Transmission Services, LLC (MCImetro). In addition, the Commission received a "Master Services Agreement," which attached as Exhibit 1 the "Qwest Platform Plus™ Service," which together are referred to as the "QPPTM Agreement." The QPP agreement was also entered into between Qwest and MCImetro. The Discounts Amendment and QPP Agreement were both submitted by MCImetro. However, Qwest had already submitted the Discounts Amendment and that is docketed as TC04-135. Qwest had also submitted the QPP Agreement but for informational purposes only. Based on this informational filing, the Commission did not docket the QPP Agreement but instead requested comments on whether the QPP Agreement should be submitted for approval. Since MCImetro has now submitted the QPP Agreement for filing, the Commission will accept comments on that Agreement in this docket. The Commission will accept comments on the Discounts Amendment in Docket TC04-135. Therefore, any party wishing to comment on the QPP Agreement may

do so by filing written comments with the Commission and the parties to the Agreement no later than August 23, 2004. Parties to the QPP Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 08/02/04
Initial Comments Due: 08/23/04

TC04-145 In the Matter of the Filing for Approval of Transfer of Certificate of Authority from XO Network Services, Inc. to XO Communications Services, Inc.

On August 2, 2004, XO Network Services, Inc. and XO Communications Services, Inc. filed a joint application to transfer XO Network Services, Inc.'s local and IXC authority to XO Communications Services, Inc.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 8/02/04
Intervention Deadline: 8/20/04

TC04-146 In the Matter of the Request of Faith Municipal Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On August 3, 2004, Faith Municipal Telephone Company (Faith) provided information constituting Faith's plan for the use of its federal universal service support and to otherwise verify that Faith will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/03/04
Intervention Deadline: 08/20/04

TC04-147 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Golden West Telecommunications Cooperative, Inc. and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, CommNet Cellular License Holding LLC d/b/a Verizon Wireless, Sanborn Cellular, Inc. d/b/a Verizon Wireless and Eastern South Dakota Cellular, Inc. d/b/a Verizon Wireless.

On August 3, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Golden West Telecommunications Cooperative, Inc. and Verizon Wireless. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the Agreement no later than August 23, 2004. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 08/03/04
Initial Comments Due: 08/23/04

TC04-148 **In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Kadoka Telephone Company and CommNet Cellular License Holding LLC d/b/a Verizon Wireless, Missouri Valley Cellular, Inc. d/b/a Verizon Wireless, Sanborn Cellular, Inc. d/b/a Verizon Wireless, Eastern South Dakota Cellular, Inc. d/b/a Verizon Wireless and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless.**

On August 3, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Kadoka Telephone Company and Verizon Wireless. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the Agreement no later than August 23, 2004. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 08/03/04
Initial Comments Due: 08/23/04

TC04-149 **In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Vivian Telephone Company and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, CommNet Cellular License Holding LLC d/b/a Verizon Wireless, Sanborn Cellular, Inc. d/b/a Verizon Wireless and Eastern South Dakota Cellular, Inc. d/b/a Verizon Wireless.**

On August 3, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Vivian Telephone Company and Verizon Wireless. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the Agreement no later than August 23, 2004. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest
Date Filed: 08/03/04
Initial Comments Due: 08/23/04

TC04-150 **In the Matter of the Request of James Valley Cooperative Telephone Company for Certification Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, James Valley Cooperative Telephone Company (James Valley) provided information constituting James Valley's plan for the use of its federal universal service support and to otherwise verify that James Valley will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04

Intervention Deadline: 08/20/04

TC04-151 In the Matter of the Request of Western Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Western Telephone Company (Western) provided information constituting Western's plan for the use of its federal universal service support and to otherwise verify that Western will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-152 In the Matter of the Request of Tri-County Telcom, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Tri-County Telcom, Inc. (Tri-County) provided information constituting Tri-County's plan for the use of its federal universal service support and to otherwise verify that Tri-County will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-153 In the Matter of the Request of Roberts County Telephone Cooperative Association and RC Communications, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Roberts County Telephone Cooperative Association and RC Communications, Inc. (the Company) provided information constituting the Company's plan for the use of its federal universal service support and to otherwise verify that the Company will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-154 In the Matter of the Request of Stockholm-Strandburg Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Stockholm-Strandburg Telephone Company (Stockholm) provided information constituting Stockholm's plan for the use of its federal universal service support and to otherwise verify that Stockholm will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04

Intervention Deadline: 08/20/04

TC04-155 In the Matter of the Request of Valley Telecommunications Cooperative Association, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Valley Telecommunications Cooperative Association, Inc. (Valley) provided information constituting Valley's plan for the use of its federal universal service support and to otherwise verify that Valley will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-156 In the Matter of the Request of Golden West Telecommunications Cooperative, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Golden West Telecommunications Cooperative, Inc. (Golden West) provided information constituting Golden West's plan for the use of its federal universal service support and to otherwise verify that Golden West will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-157 In the Matter of the Request of Vivian Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Vivian Telephone Company (Vivian) provided information constituting Vivian's plan for the use of its federal universal service support and to otherwise verify that Vivian will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

TC04-158 In the Matter of the Request of Kadoka Telephone Company for Certification Regarding its Use of Federal Universal Service Support.

On August 4, 2004, Kadoka Telephone Company (Kadoka) provided information constituting Kadoka's plan for the use of its federal universal service support and to otherwise verify that Kadoka will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

**TC04-159 In the Matter of the Request of Union Telephone Company for Certification
Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, Union Telephone Company (Union) provided information constituting Union's plan for the use of its federal universal service support and to otherwise verify that Union will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

**TC04-160 In the Matter of the Request of Bridgewater-Canistota Independent Telephone
Company for Certification Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, Bridgewater-Canistota Independent Telephone Company (Bridgewater) provided information constituting Bridgewater's plan for the use of its federal universal service support and to otherwise verify that Bridgewater will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

**TC04-161 In the Matter of the Request of Armour Independent Telephone Company for
Certification Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, Armour Independent Telephone Company (Armour) provided information constituting Armour's plan for the use of its federal universal service support and to otherwise verify that Armour will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

**TC04-162 In the Matter of the Request of Sioux Valley Telephone Company for Certification
Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, Sioux Valley Telephone Company (Sioux Valley) provided information constituting Sioux Valley's plan for the use of its federal universal service support and to otherwise verify that Sioux Valley will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/04/04
Intervention Deadline: 08/20/04

**TC04-163 In the Matter of the Request of McCook Cooperative Telephone Company for
Certification Regarding its Use of Federal Universal Service Support.**

On August 4, 2004, McCook Cooperative Telephone Company (McCook) provided information constituting McCook's plan for the use of its federal universal service support and to otherwise verify that McCook will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best

Staff Attorney: Karen E. Cremer

Date Docketed: 08/04/04

Intervention Deadline: 08/20/04

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Cynthia.Howerton@qwest.com

Cynthia D. Howerton
Senior Legal Assistant

August 16, 2004

RECEIVED

AUG 17 2004

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: TC 04-144 – In the Matter of the Filing for Approval of a Master Services Agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC - Motion To Dismiss Filing For Approval Of Negotiated Commercial Agreement

Dear Ms. Bonrud:

Please find enclosed for filing in the above referenced docket, an original and ten (10) copies of Motion To Dismiss Filing For Approval Of Negotiated Commercial Agreement.

We have also enclosed an extra copy of this letter and of the filing. Please date stamp the extra copies and return them to us for our files. We will submit an electronic copy of the filing to you as well.

Thank you for your help with this matter. Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Cynthia D. Howerton". The signature is written in a cursive, flowing style.

Cynthia D. Howerton
Assistant to Melissa K. Thompson

Encl.

cc: Larry Toll
Colleen Sevold

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

AUG 17 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Filing for Approval
of a Master Services Agreement between
Qwest Corporation and MCImetro Access
Transmission Services, LLC

TC 04-144

MOTION TO DISMISS
FILING FOR APPROVAL
OF NEGOTIATED COMMERCIAL
AGREEMENT

Qwest Corporation (“Qwest”) hereby respectfully moves the South Dakota Public Utilities Commission (the “Commission”) for an order dismissing the Filing for Approval by MCImetro Access Transmission Services, L.L.C., (“MCI”) to the extent MCI’s filing seeks Commission review and approval of the QPP™ Master Service Agreement negotiated between Qwest and MCI.

I. BACKGROUND AND INTRODUCTION

On July 16, 2004, Qwest and MCI entered into a commercial agreement entitled the “Qwest Master Service Agreement” (the “Commercial Agreement”)¹ under which Qwest agreed to provide Qwest Platform Plus™ services to MCI. Qwest Platform Plus™ services are offered under Section 271 of the Federal Telecommunications Act and consist primarily of the local switching and shared transport network elements in combination with certain other services.² As a result of the D.C. Circuit’s decision in *United States Telecom Association v. FCC* (“USTA II”)³, Qwest is no longer required to provide these network elements under Sections 251 or 252 of the

¹ The Commercial Agreement consists of the Qwest Master Services Agreement, Services Exhibit 1 – Qwest Platform Plus™ Service, Attachment A of Service Exhibit 1 (Performance Targets for Qwest QPP™ Service and the Rate Sheet.

² Section 26 of the Commercial Agreement expressly states that “This Agreement is offered by Qwest in accordance with Section 271 of the Act.”

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

Act. The Commercial Agreement expressly provides that it does not amend or alter the terms and conditions of existing interconnection agreements between Qwest and MCI.⁴ Most importantly, and as explained below, because the Commercial Agreement does not create any terms or conditions for services that Qwest must provide under Sections 251(b) and (c), it is not an interconnection agreement or an amendment to the existing interconnection agreement between Qwest and MCI.

Also on July 16, 2004, Qwest and MCI entered into a separate agreement that is an amendment to their interconnection agreement in Colorado entitled “Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts” (the “ICA Amendment”). The ICA Amendment generally provides for the deployment of a batch hot cut process and contains certain other terms and conditions that may fall within the scope of Sections 251 of the Act. Both Qwest and MCI have filed the ICA Amendment with the Commission and request the Commission’s approval pursuant to Section 252 of the Act.

On August 2, 2004, MCI filed the Commercial Agreement and the ICA Amendment with the Commission and requested that the Commission review and approve both Agreements.⁵ Qwest has provided the Commercial Agreement for the Commission’s information and is offering its terms and conditions to any carrier assuming the same obligations as MCI. Notwithstanding the public nature of this Agreement and the offer to make it available to all other carriers, Qwest disputes that the Commercial Agreement falls within the Section 252 filing obligation and that Commission has jurisdiction to review, approve or reject the Commercial

⁴ Qwest Master Services Agreement, Section 33.1.

⁵ The Commercial Agreement is a fourteen state agreement. The Commercial Agreement filed by MCI with the Commission does not include the complete Rate Sheet. It includes only the portion of the Rate Sheet pertaining to Colorado.

Agreement. Accordingly, for the reasons that follow, Qwest moves to dismiss that part of MCI's Filing for Approval that requests Commission review of the Commercial Agreement.

II. ARGUMENT

A. The Authority of the Commission to Review and Approve Agreements Under the Federal Act is Governed by Federal Law.

Whether the Commission has the power to review and approve the Commercial Agreement is a question of federal law governed by the provisions of the 1996 Federal Telecommunications Act (the "Act") and the controlling federal authorities construing the Act. There are two primary controlling authorities. The first is the decision of the United States Court of Appeals for the District of Columbia in *United States Telecom Association v. FCC* ("USTA II").⁶ The second is the October 2002 Federal Communications Commission ("FCC") decision in a declaratory ruling docket ("Declaratory Order") brought by Qwest that defines "the scope of the mandatory filing requirement set forth in section 252(a)(1)."⁷ Read together, these authorities definitively establish that the Commercial Agreement is not subject to either section 251 or 252 and is therefore not subject to review and approval by the Commission.

B. The Commercial Agreement Relates to Network Elements That Are No Longer Required to Be Unbundled Pursuant to Section 251 or 252 of the Act.

Under section 251(d)(2) of the Act, before an incumbent local exchange carrier such as Qwest can be required to unbundle network elements, the FCC must first lawfully determine, at a minimum, that "access to such network elements as are proprietary in nature is *necessary*" and that "the failure to provide access to such network elements would *impair* the ability of the

⁶ ("USTA II").

⁷ Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) ¶ 1.

telecommunications carrier seeking access to provide the services that it seeks to offer.”⁸ Absent such a lawful determination, there is no obligation to unbundle under section 251 of the Act.

A simple reading of section 251 makes this clear. Section 251(b)(3) states that ILECs must make network elements available to CLECs, subject to the “necessary” and “impair” standards of section 251(d)(2). Section 251(c)(3) authorizes unbundling only “in accordance with . . . the requirements of this section [251],”⁹— that is, only if the FCC determines that the “impairment” test of section 251(d)(2) is satisfied. As the Supreme Court and D.C. Circuit have held, the section 251(d)(2) requirements reflect Congress’s decision to place a real upper limit on the level of unbundling regulators may order.¹⁰

Congress assigned the task of applying the section 251(d)(2) impairment test and “determining what network elements should be made available for purposes of subsection [251](c)(3)” explicitly to the FCC.¹¹ The Supreme Court confirmed that as a precondition to unbundling, section 251(d)(2) “requires the [Federal Communications] Commission to determine on a rational basis which network elements must be made available, taking into account the objectives of the Act and giving some substance to the ‘necessary’ and ‘impair’ requirements.”¹²

In *USTA II*, the D.C. Circuit vacated the FCC’s impairment determination for mass market switching.¹³ In doing so, the Court also expressly stated that “we doubt that the record supports a national impairment finding for mass market switches.” Consequently, Qwest is no

⁸ 47 U.S.C. § 251(d)(2)

⁹ 47 U.S.C. § 251(c)(3).

¹⁰ See *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 390 (1998) (“We cannot avoid the conclusion that if Congress had wanted to give blanket access to incumbents’ networks on a basis as unrestricted as the scheme the [FCC] has come up with, it would not have included §251(d)(2) in the statute at all.”); *USTA v. FCC*, 290 F.3d 415, 418, 427-28 (quoting *Iowa Utilities Board’s* findings regarding congressional intent and section 251(d)(2) requirements, and holding that unbundling rules must be limited given their costs in terms of discouraging investment and innovation).

¹¹ 47 U.S.C. § 251(d)(2).

¹² *Iowa Utilities Board*, 525 U.S. at 391-92.

¹³ *USTA II*, 359 F.3d at 571.

longer obligated to provide unbundled access to mass market switching under section 251 of the Act. As the Oregon Commission recently noted:

We do not...agree with the assertion that Verizon must continue providing the UNEs at issue until there is a finding that CLECs are *not impaired* without access to those elements. Section 252(d) [sic] requires an affirmative finding of impairment before an incumbent telecommunications carrier can be required to provide a UNE. Absent a legally sufficient finding of impairment by the FCC or this Commission, there is no obligation to unbundle.¹⁴

Furthermore, the FCC determined in its Triennial Review Order that shared transport is not required to be unbundled under section 251 of the Act where unbundled switching is not required to be unbundled.¹⁵

As discussed in Part C below, the entire premise of the duty to file an agreement with a state commission under section 252 is based on the fact that the service or element provided is required by section 251(b) or (c).¹⁶ Thus, when, as with switching and shared transport, a service is no longer required by section 251, there is no section 252 obligation to file a privately-negotiated agreement with a state commission nor is there a section 252 power in the state commission to review and approve the agreement.¹⁷

C. In the Declaratory Order, the FCC Ruled that Agreements Like the Commercial Agreement Need Not Be Filed

The 2002 Declaratory Order sets out explicit standards governing the circumstances under which agreements between an ILEC and CLEC must be filed with state commissions. The

¹⁴ *In the Matter of VERIZON NORTHWEST INC. Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Oregon Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, ARB 531, (Oregon PUC June 30, 2004).

¹⁵ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (FCC rel. August 21, 2003) (“TRO”) ¶ 534.

¹⁶ 47 U.S.C. § 252(a)(1) (“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 The agreement . . . shall be submitted to the State commission under subsection (e) of this section.”) (emphasis added).

¹⁷ The opening phrase of section 252 is instructive on this point. It states that “[u]pon receiving as request for interconnection, services, or *network elements pursuant to section 251*” 47 U.S.C. § 252(a)(1) (emphasis added). Thus, the obligations of section 252 come into being only if a section 251 service or element is the subject of the agreement.

basic standard is that an ILEC must, pursuant to section 252(a)(1), file any 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.”¹⁸ The FCC characterized these requirements as properly balancing the right of CLECs “to obtain interconnection terms pursuant to section 252(i)” with the equally important policy of “removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs.”¹⁹

With regard to the issue in this case, the FCC could not have been more clear that there is no requirement that an ILEC file all agreements:

We . . . disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier. . . . Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1).²⁰

It is undisputed that *USTA II* eliminated the requirement that switching and shared transport be provided as UNEs under section 251(b) or (c). Thus, the Declaratory Order stands for the clear proposition that Qwest has no obligation to file the Commercial Agreement and the Commission has no authority to review and approve it.

D. Contracts for Non-Section 251 Network Elements Are Not Subject to State Jurisdiction.

As shown above, only agreements pertaining to the provision of services required under sections 251(b) and (c) of the Act constitute “interconnection agreements” that must be filed under section 252. The Commercial Agreement does not pertain to an “unbundled network element” under section 251(c) or any other facility or service that must be provided under

¹⁸ Declaratory Order ¶ 8 (italics in original).

¹⁹ *Id.*

²⁰ *Id.*, footnote 26 (italics in original).

sections 251(b) or (c), and thus is not within the section 252 filing requirement. In addition, the FCC has jurisdiction over contracts for non-251 network elements that preempts the state commissions from exercising jurisdiction or regulatory review over such contracts. As explained in more detail below, the FCC, and not the states, has jurisdiction over these elements for the following reasons: (1) in many cases, the elements are required under federal law to be provided on an unbundled basis by RBOCs such as Qwest under section 271(c)(2)(B) of the Act. Thus the unbundling obligation is federal, as is the jurisdiction to review the contracts for these elements; (2) network elements remain subject to federal jurisdiction even after they have been removed from the list of section 251(c)(3) elements; and (3) contracts between carriers for network elements that do not meet the “necessary” and “impair” tests also fall within express federal filing jurisdiction. .

First, in the case of Qwest (and other RBOCs), there is an independent investiture of federal jurisdiction under the Act. Many of the elements that have been removed from the list of unbundled elements must still be unbundled pursuant to section 271(c)(2)(B) of the Act.²¹ The offering of the switching element, for example, on an unbundled basis pursuant to section 271(c)(2)(B)(vi) is subject to federal jurisdiction.²² The filing and review (if any) of contracts entered into pursuant to section 271(c)(2)(B) of the Act is a federal matter which has not been delegated to the states.²³

Second, network elements made available under the Act are subject to the jurisdiction of the FCC, subject to specific exceptions.²⁴ The FCC’s jurisdiction is not diminished whenever a

²¹ TRO, 18 FCC Rcd. at 17383-84, para. 652.

²² The FCC, in the TRO, confirmed this jurisdiction, noting that it would enforce compliance with section 271 offerings (*id.* at 17385-86, para. 655) and that it would apply sections 201 and 202 of the Act to such offerings (*id.* at 17389, para. 663).

²³ Of course, state jurisdiction over section 271 issues is considerably more limited than is the case with section 251, and is advisory only. *See* 47 U.S.C. § 271(d)(2)(B).

²⁴ TRO, 18 FCC Rcd. At 17100-01, paras. 194-95; *USTA II*, 359 F.3rd at 594.

network element is removed from the FCC's list of unbundled elements.²⁵ What this jurisdictional structure means is that a valid federal policy (in this case the policy favoring market agreements for network elements that have not met the "necessary" and "impair" test) is presumptively preemptive of inconsistent state regulations because the federal nature of the service under the Act automatically brings them into the zone of federal jurisdiction.²⁶ State filing and review requirements are not permissible because they are inconsistent with this preemptive federal policy.

Third, contracts between carriers for network elements that do not meet the "necessary" and "impair" test also fall within express federal filing jurisdiction. That is, the FCC has the authority to require that all such contracts be filed with the agency and to enforce the Act's section 202(a) non-discrimination requirements with regard to them. As a matter of rule, the FCC has exempted non-dominant carriers from the federal filing obligations applicable to such contracts. No such exemption exists for contracts between ILECs (which are subject to dominant carrier regulation) and CLECs. Furthermore, unlike access services, the Commission has not directed the ILECs to provide these network elements as tariffed offerings. These contracts therefore must be filed with the FCC, but are not subject to prior FCC approval. Concomitantly, states have no authority to duplicate this federal filing requirement (beyond reviewing such contracts for informational purposes only).

Section 211(a) of the Communications Act requires that:

Every carrier subject to this [Act] shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common

²⁵ *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 385 (1999): "Congress has broadly extended its law into the field of intrastate telecommunications, but in a few specific areas (ratemaking, interconnection agreements, etc.) has left the policy implications of that extension to be determined by state commissions...."

²⁶ In other words, the contrary presumption for services assigned to the intrastate jurisdiction by section 2(b) of the Act does not apply because federal jurisdiction over the regulatory treatment of the element has been established.

carriers not subject to the provisions of this chapter, in relation to any traffic affected by the provisions of this chapter to which it may be a party.

This statutory language provides an affirmative grant of power to carriers to order their affairs with other carriers by way of contract unless the FCC's rules (or other provisions of the Act) provide otherwise, even when the same business relationship with an end-user customer would need to be dealt with in a tariff.²⁷ It stands for the legal proposition that Qwest may enter into commercial negotiations with CLECs for the sale of network elements not subject to sections 251(b) or (c), and may enter into binding agreements with those CLECs for the sale of those network elements (even though untariffed sales to end-user customers would generally not be lawful). Pursuant to section 211, Qwest has filed the Qwest/MCI Commercial Agreement with the FCC, thereby complying with that section and perfecting the FCC's jurisdiction over the Commercial Agreement.

The general prohibition against "unreasonable discrimination" applies to such contracts.²⁸ Carriers may, of course, purchase services from the tariffs of another carrier or choose to tariff their inter-carrier offerings -- section 211(a) provides carriers a choice in those instances where the FCC has not acted to actually require either a contract (network elements) or a tariff (exchange access). In point of fact, the current structure whereby interexchange carriers purchase access to local exchange carrier facilities and services pursuant to tariff is of relatively

²⁷ *Bell Telephone of Pennsylvania v. FCC*, 503 F.2d 1250, 1277 (3d Cir. 1974). See also *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking*, 11 FCC Rcd. 7141, 7190 ¶ 97 (1996); *In the Matter of the Applications of American Mobile Satellite Corporation, Order and Authorization*, 7 FCC Rcd. 942, 945 ¶ 15 (1992); *In the Matter of Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor, Notice of Proposed Rulemaking*, 84 FCC 2d 445, 481, ¶95 (1981).

²⁸ *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988).

recent origin,²⁹ and the access tariff regime replaced a system governed largely by inter-carrier contracts and partnerships.³⁰

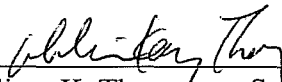
These statutory federal filing requirements are important because they show a federal regulatory regime (already in place) that deals with the precise issue (filing of contracts for interconnection services not covered by sections 251(b) or (c)) that conflicts directly with any state filing requirements applicable to those same agreements. State filing requirements would conflict irreconcilably with the federal jurisdiction over the network elements covered by the agreements.

II. CONCLUSION

For the reasons set forth herein, Qwest respectfully moves the Commission to dismiss the Filing for Approval submitted by MCI to the extent it seeks review of the Qwest Master Service Agreement.

DATED this 16 day of August, 2004.

QWEST CORPORATION

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²⁹ See *In the Matter of MTS and WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 224, 226-31 ¶¶ 12-35 (1980).

³⁰ See *In the Matter of MTS and WATS Market Structure, Third Report and Order*, 93 FCC 2d 241, 246 ¶ 11, 254 ¶ 39, 256-60 ¶¶ 42-55 (1983).

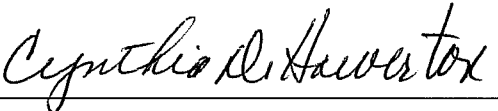
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2004, an original and ten (10) copies of MOTION TO DISMISS FILING FOR APPROVAL OF NEGOTIATED COMMERCIAL AGREEMENT was forwarded via UPS Overnight, to the following:

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

With a copy via U. S. Mail to:

Thomas F. Dixon
MCI
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August 20, 2004

RECEIVED

AUG 23 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Via Overnight Mail

Pam Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Filing for Approval of a Master Services Agreement
between Qwest Corporation and MCImetro Access Transmission
Services, LLC, Docket No. TC04-144

Dear Ms. Bonrud:

Enclosed are the original and ten copies of AT&T's Comments in the above-referenced matter.

Sincerely,

Steven H. Weigler

SHW/jk

Enclosures



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

AUG 23 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Filing for Approval)
of a Master Services Agreement between) Docket No. TC04-144
Qwest Corporation and MCImetro Access)
Transmission Services)

AT&T'S COMMENTS ON MCI'S APPLICATION FOR REVIEW AND APPROVAL
OF A MASTER SERVICES AGREEMENT BETWEEN QWEST CORPORATION
AND MCIMETRO ACCESS TRANSMISSION SERVICES, LLC

AT&T Communications of Midwest, Inc. ("AT&T") hereby submits comments on the Master Services Agreement filed on August 2, 2004, as referenced in the South Dakota Public Utilities Commission's list of weekly filings.

I. INTRODUCTION

On July 20, 2004, Qwest posted a general notification on its web site advising that on July 16, 2004, Qwest and MCI had signed a commercially negotiated agreement and an amendment to MCI's existing interconnection agreement ("ICA"). According to the announcement, the agreements became effective on Friday, July 16, 2004, the day the agreements were executed. Furthermore, according to the notification,, "[t]he commercial agreement covering Qwest Platform Plus™ ["QPP™"] is not subject to Section 252 requirements and therefore does not fall under the jurisdiction of any state regulatory commission." The announcement states that "Qwest provided a courtesy copy of the commercial agreements to its in-region state commissions." Qwest will make the QPP commercial agreement available to any interested competitive local exchange carrier ("CLEC").

According to the Commission's summation, MCI filed its Application for Review and Approval which includes two agreements: 1) Amendment to Interconnection

Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts and 2) Master Service Agreement for the Provision of Qwest Platform Plus™ Service (“QPP™ MSA”). MCI’s filing describes the terms of the agreements and asks the Commission to approve the QPP™ MSA agreement and the amendment to its ICA.

The amendment to the ICA essentially makes three changes to the ICA: 1) batch hot cut terms and conditions are added (§ 3.0); 2) “Qwest shall not offer or provide to MCI and MCI shall not order or purchase from Qwest, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport, in combination with other network elements as part of the unbundled network element platform (“UNE-P”), out of its existing interconnection agreement(s), with Qwest, a Qwest SGAT or any other interconnection agreement governed by 47 U.S.C. §§ 251 and 252 that MCI or one of its affiliates may in the future entered into with Qwest and MCI waives any right under applicable law in connection there with[]” (§ 4.0); and 3) line splitting will be available for loops provided pursuant to the ICA. § 5.3. The ICA, except as amended, will remain in full force and effect. § 5.1. The amendment also provides that if “the FCC, state commission or any governmental agency rejects or modifies any material provision in this Agreement, either party may immediately upon written notice to the other party terminate this Amendment and the QPP MSA.” § 2.6.

The QPP™ MSA contains three relevant terms: 1) the definition of QPP™ service (Service Exhibit 1); 2) performance targets (Attachment A to Service Exhibit 1); and 3) the recurring and nonrecurring charges for QPP™. QPP™ service consists of the “Local Switching Network Element” (including the basic switching function, port and features, functions and capabilities of the switch) and the “Shared Transport Network

Element” in combination, at a minimum. “As part of the QPP™ service, Qwest agrees to combine the Network Elements that make up QPP™ service with Analog/Digital Capable Loops, with such Loops (including services such as line splitting) being provided pursuant to the rates, terms and conditions of the MCI’s ICAs ...” QPP™ MSA, Service Ex. 1, § 1.1. *See also id*, § 1.2. The QPP™ MSA provides that if “the FCC, a state commission or any governmental authority or agency rejects or modifies any material provision of this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement and any interconnection agreement amendment executed concurrently with this Agreement.” § 23.

The result is that the existing ICA is amended to: 1) add a batch hot cut process; 2) provide that Qwest does not have to offer unbundled mass market switching, enterprise switching and unbundled shared transport network elements contained in the ICA; and 3) provide that MCI will not order unbundled mass market switching, enterprise switching and unbundled shared transport network elements contained in the existing ICAs. In lieu of purchasing these network elements under the terms of its ICA, MCI can purchase the “Local Switching Network Element” and “Shared Transport Network Element” out of the QPP™ MSA and have Qwest combine these “Network Elements” with loops purchased from the existing ICA to enable MCI to provide local service. MCI may no longer purchase UNE-P, but for all intents and purposes, the new service is the same except for the prices MCI pays for the network elements purchased under the QPP™ MSA.

On August 2, 2004, MCI filed the amendment to its existing interconnection agreement with the Commission, which is referred to in total as the QPP Agreement. Qwest also filed the QPP Agreement but did not request approval of the amendment.

Based on its review of the documents, AT&T believes that these amendments to the existing ICA need to be filed with the Commission for approval pursuant to Section 252(e)(1) of the Act. AT&T currently takes no position on whether the agreements meet the standards for approval contained in Section 252(e)(2)(A).

II. ARGUMENT

A. Section 252 of the Act

Qwest's QPP™ MSA with MCI is an "interconnection agreement adopted by negotiation" that must be filed with the state commissions for approval pursuant to Section 252(e)(1). 47 U.S.C. § 252(e)(1). Although Qwest's notification claims that its agreement is a "commercial" agreement negotiated outside the requirements of the 1996 Act, the statute clearly requires the MCI QPP™ MSA to be filed with the South Dakota Commission to ensure that the agreement is nondiscriminatory, consistent with the public interest, and that its terms are available to others. The South Dakota Commission should assert its authority under Section 252.

The statutory language is clear: "Any interconnection agreement adopted by negotiation or arbitration *shall* be submitted for approval to the State commission." 47 U.S.C. § 252(e)(1) (emphasis added).¹ The FCC has declined to adopt a definitive interpretation of the term "interconnection agreement" as used in Section 252(e).² ("We decline to establish an exhaustive, all-encompassing 'interconnection agreement' standard.") Rather, the FCC has left it up to the states to make those determinations on a

¹ South Dakota also has substantive requirements for the filing and approval of interconnection agreements. See e.g. ARSD 20:10:32:21.

² *Qwest Communications International Inc Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276 (rel. Oct. 4, 2002) ("*Qwest Declaratory Ruling*"), ¶ 10.

case-by-case basis. *Id.* (“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.”)

Although the FCC has not defined the outer boundaries of the filing requirement, it has made clear that the scope of the filing requirement is exceedingly broad. The FCC has held that the “basic class of agreements that should be filed” – but by no means the only ones that should be filed – are those that establish “ongoing obligations pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation.” *Id.*, ¶ 8. The FCC has recognized that certain classes of agreements need not be filed under Section 252, but those classes are extremely narrow and ancillary: (1) agreements concerning dispute resolution and escalation provisions whose terms are otherwise publicly available; (2) settlement agreements that do not affect an incumbent LEC's ongoing obligations under Section 251; (3) forms used to obtain service; and (4) certain agreements entered into during bankruptcy. *Id.* ¶¶ 9, 12-14. The QPP™ MSA does not fall within any of those exceptions.

More fundamentally, as a matter of simple statutory interpretation, the filing requirement must be at least as broad as necessary to permit the state commissions to perform the reviewing functions that Congress gave them in Section 252; otherwise, those provisions would be effectively nullified. For example, Congress expressly required the state commissions to ensure that incumbent LECs do not enter into *negotiated* agreements that “discriminate against a telecommunications carrier not a party

to the agreement.” 47 U.S.C. § 252(e)(2)(A)(1). Indeed, non-discrimination is a bedrock principle of the Communications Act in general. *See MCI Telecommunications Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 229-31 (1994). Accordingly, Section 252 necessarily requires the filing of *all* agreements involving network elements or other similar arrangements provided to similarly situated carriers; otherwise, state commissions would have no way of ensuring that incumbent LECs were not entering into discriminatory or preferential secret agreements with certain carriers regarding such elements. This is true regardless of whether the incumbent LEC is offering those network elements voluntarily or pursuant to an FCC requirement.

Qwest’s apparent contrary interpretation would render Section 252(e)(2)(A)(1) meaningless. Apparently Qwest’s view is that Qwest and a willing partner could always enter into secret, preferential side agreements concerning network elements and evade Section 252 review by simply agreeing that their negotiations were not “pursuant to Section 251.”³

The FCC has consistently recognized that the requirement that *all* agreements be filed and approved by the state commissions is the core statutory protection against discriminatory treatment in the context of local competition. For example, in the *Local Competition Order*⁴, the FCC noted that “[r]equiring all contracts to be filed also limits an incumbent LEC’s ability to discriminate,” because it allows all “carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to

³ This is precisely what Qwest was doing recently in its region: it was entering into secret, preferential side deals with favored CLECs in order to remove their objections to Qwest’s Section 271 applications and to hasten Qwest’s entry into the interLATA market. The FCC has since found that Qwest’s conduct constituted a gross violation of the filing requirements of § 252, and the FCC recently issued a notice of apparent liability to Qwest for the largest fine in FCC history. *Qwest Corporation, Notice of Apparent Liability for Forfeiture*, File No. EB-03-IH-0263 (March 12, 2004) (“*Qwest NAL*”).

⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 (1996) (“*Local Competition Order*”).

others.” *Local Competition Order*, ¶ 167; *see also id.*, ¶ 151 (noting the anticompetitive dangers of nondisclosure agreements). Similarly, in the *Qwest NAL*, the FCC noted that Section 252’s filing requirements “are the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors.” *Qwest NAL*, ¶ 46. Indeed, the FCC recognized that failure to file agreements “could lead to a permanent alteration in the competitive landscape or a skewing of the market in favor of certain competitors.” *Id.*, ¶ 43. In an environment in which the incumbent LEC is offering network elements voluntarily, rather than pursuant to nationally uniform minimum standards, that risk of discrimination *increases*, and the vigilance of the state commission under Section 252 becomes all the more important.

Section 252 also requires the state commissions to enforce in the first instance the statutory requirement that a network element offered to one carrier in an approved interconnection agreement must be offered to all carriers – the so-called “pick and choose” rule. 47 U.S.C. § 252(i). Section 252(i) by its terms does not limit the incumbent LEC’s pick-and-choose obligations to network elements offered pursuant to an FCC rule; rather, the statute’s plain terms provide that “*any*” network element or service made available to one carrier must be made available to any carrier on the same terms and conditions contained in the approved agreement. Enforcement of Section 252(i), however, depends on carriers filing their agreements with the state commission for approval and their public availability. Under Qwest’s view, Section 252(i), like the nondiscrimination requirement, would become meaningless and easily evaded, because an incumbent LEC could avoid its pick-and-choose obligations simply by agreeing with a willing partner that their negotiations for network element terms would not be conducted

“pursuant to” Section 251. *See Qwest NAL*, ¶ 20. (Absent the Section 252 mechanism of filing and approval, “the nondiscriminatory, pro-competition purpose of Section 252(i) would be defeated....” (citation omitted).)

Under these principles, there is no doubt that the MCI agreement must be filed with the state commission for approval under Section 252(e)(1). Qwest is providing network elements to MCI, albeit “voluntarily” and on terms and rates that are “without regard to the standards of [Sections 251 and 252].”⁵ Section 252 requires that such an agreement be filed with the state commission, however, so that the state commission can fulfill its statutory mandate to ensure that the agreement is nondiscriminatory. *See, e.g., Qwest NAL*, ¶ 47. (“[T]he potential for such discrimination underlies our concerns regarding Qwest’s apparent violations of Section 251(a)(1),” even if there is in fact no discrimination.) Filing is also necessary to facilitate operation of the statutory “pick-and-choose” requirement.

Qwest appears to think that filing is not required under Sections 252(a)(1) and (e) because MCI’s request for network elements was not “pursuant to Section 251.” 47 U.S.C. § 251(a)(1). This position is wrong for at least two reasons. First, there can be no serious question that the MCI agreement was in fact negotiated for network elements “pursuant to Section 251” within the meaning of Section 251(a)(1). MCI was undoubtedly invoking Qwest’s duty under Section 251(c)(1) to negotiate with requesting carriers in good faith. *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 763 (8th Cir. 2000), *rev’d on other grounds, Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002). Moreover, MCI’s request for network elements, even if voluntarily provided by Qwest,

⁵ There is no question that the Local Switching Network Element and the Shared Transport Element described in, and provided under the terms of, the QPP™ MSA fall within the definition of network element contained in the Act. 47 U.S.C. § 153(45).

necessarily depended on Qwest's fulfillment of its continuing *duties* under Section 251 to provide local number portability, dialing parity, reciprocal compensation, and even unbundled loops, which remain a mandatory element. If Qwest had balked at providing any of these requirements, MCI could have invoked its right to arbitration under Section 252 – a fact which undoubtedly informed the parties' negotiations. Accordingly, there is no meaningful sense in which the negotiations could be said to be outside the purview of Sections 251 and 252.

Even if that were not true, however, the MCI agreement is still a negotiated agreement within the meaning of Section 252(a)(1). Any request for network elements, even if the element is not required by FCC rule, triggers the incumbent LEC's duty under Section 251(c)(1) to negotiate in good faith in accordance with Section 252 and its continuing duty under Section 251(c)(3) to provide such elements subject to good faith negotiations and "in accordance with the agreement." 47 U.S.C. § 251(c)(1) & (c)(3). Congress never intended Section 252(a)(1) to be interpreted in a manner that would allow the negotiating parties to evade the statutory nondiscrimination requirements by simply agreeing that those requirements would not apply. As long as the incumbent has agreed to provide network elements or their functional equivalent – even if the terms are "without regard to the standards in [§ 251(b) and (c)]" – the agreement must be filed with the state commission for approval.

In short, this is not a close question: the QPP™ MSA must be filed with the state commission for approval. At a minimum, if there is a question as to whether the agreement should be filed, the FCC has held that the state commissions should make those determinations on a case-by-case basis. *Qwest Declaratory Ruling*, ¶ 10. It is not

for Qwest to determine unilaterally that the agreement falls outside Section 252's requirements; the agreement must be filed immediately to permit the state commission to make the determinations required by statute.⁶

Numerous state commissions have recently considered the issue of whether "commercial agreements must be filed with the State Commission for approval. The states have uniformly found that such agreements must be filed with them.

In response to SBC Communications, Inc.'s ("SBC") and Sage Telecom, Inc.'s ("Sage") recently executed "commercial agreements", the California Public Utilities Commission required SBC to file the Sage agreement with the Commission. The Commission noted: "In order for the Commission to perform this statutory duty [under Section 252(e)(2) of the Act], the interconnection agreement must be formally filed with the Commission and open to review by any interested party." Letter from Randolph L. Wu, State of California Public Utilities Commission, to SBC (April 21, 2004).

The Michigan Public Service Commission issued an Order requiring SBC and Sage to file their agreement for review. The Commission held that under the Act "interconnection agreements arrived at through negotiations must be filed with and approved by [the state Commission]." Case No. U-14121, Michigan Public Service Commission (April 28, 2004). The Chair of the Michigan Public Service Commission also publicly stated that the State commission "must be able to review the terms of this agreement and any associated agreements if it is to fulfill its responsibilities under state and federal law to ensure that the agreement is in the public interest and does not

⁶ Prompt submission to state commissions is all the more important because, even if Qwest could establish that some or all of the QPP™ MSA need not be filed Section 252 – and there is no conceivable basis for any such finding – the agreement would be subject to other filing requirements under state law. If the MCI arrangements are not network elements for purposes of Section 252, then they are "an agreement for interconnection, network elements, and other telecommunications services" under ARSD 20:10:32:21.

discriminate against other providers.” Michigan Public Service Commission, Press Release April 28, 2004 (available at <http://www.michigan.gov/mpsc>).

On May 5, 2004, the Public Utilities Commission of Ohio directed SBC and Sage to file comments and legal analysis supporting their position that they did not have to file the new agreement with the Commission. The Chairman of the Commission stated that the action was necessary “to sort out [the Commission’s] obligations under the Telecommunications Act as they apply to these agreements.” Public Utilities Commission of Ohio News Release, May 5, 2004 (available at www.puc.state.oh.us).

On May 11, 2004, the Missouri Public Service Commission ordered SBC and Sage to make a filing to explain why the “commercial agreements” should not be filed and considered by the Commission pursuant to Sections 251 and 252 of the Act. *In re Agreement Between SBC Communications, Inc. & Sage Telecom, Inc.*, Order to Show Cause, Mo. P.S.C. Case no. TO-2004-0576 (May 11, 2004).

By order dated May 13, 2004, the Public Utilities Commission of Texas ordered SBC and Sage to file their agreement. Citing the FCC’s *Qwest Declaratory Ruling*, the Texas Commission held that “the filing and review requirements are ‘the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors.’”

On July 27, 2004, the Missouri Public Service issued an order rejecting the amendment to the Sage existing interconnection with SBC. The Commission found that the amendment that was filed with the Commission was indivisible from the commercial agreement that had not been filed, and neither agreement is a “stand-alone” agreement.

The amendment is clearly related to the commercial agreement. Each references the other. They were

negotiated at the same time, and executed within a few days of each other. The amendment, by its terms, will be void in any state in which the commercial agreement becomes inoperative. Perhaps most telling, the commercial agreement itself refers to the “indivisible nature” of the commercial agreement and the amendment. From these facts, the Commission concludes that the two are indivisible; that is, neither one is a stand-alone agreement.

Agreement between SBC Communications, Inc. and Sage Telecom, Inc., Case No. To-2004-0576; *Amendment Superseding Certain 251/252 Matters between Southwest Bell Telecom, L.P., and Sage Telecom, Inc.*, Case No. TO-2004-0584, Order Consolidating Cases, Rejecting Amendment to Interconnection Agreement, and Denying Intervention (July 27, 2004) at 3.⁷

On August 2, 2004, the Kansas Corporation Commission approved the amendment to Sage’s existing interconnection agreement with SBC. However, it withheld judgment on whether the commercial agreement must be filed for approval pursuant to Section 252 until the Federal Communications Commission rules on SBC’s emergency petition. (SBC has asked the FCC to determine whether the commercial agreement needs to be filed with the state commissions, pursuant to Section 252.)

Application of Sage Telecom, Inc. for Approval of the K2A Interconnection Agreement Under the Telecommunications Act with Southwestern Bell Telephone Company, Docket No. 01-SWBT-1099-IAT, Order (Aug. 2, 2004).⁸

NARUC also stated that SBC and Sage should be required file the agreements with the respective state commissions. Commissioner Stan Wise, NARUC President and

⁷ The Missouri Commission did not order SBC or Sage to file the commercial agreement, leaving the decision to management. However, based on the order, it is unlikely the Commission will approve the amendment to the interconnection without the commercial agreement also being filed for approval. The MCI ICA amendment and the QPP™ MSA are also indivisible. *See* ICA Amendment, § 2.6 and QPP™ MSA § 23.

⁸ The Kansas Staff found the amendment to the interconnection agreement and the commercial agreement to be “inextricably intertwined.” Order at 6.

Commissioner of the Georgia Public Service Commission, urged SBC and Sage to file the negotiated interconnection agreements for approval “pursuant to § 252(e) of the Act in the States where they are effective as required by § 252(a)(1).” Letter from Stan Wise, NARUC President, to Sage and SBC, April 8, 2004. Mr. Wise noted: “Rapid filing and approval by the respective State commissions can only facilitate the ongoing industry negotiations.” *Id.*

B. Section 271 of the Act

In order to prevent unlawful discrimination, 47 U.S.C. § 271 requires Qwest to file for Commission approval agreements for the provision of mass market switching, shared transport and of other network elements. First, independent of any impairment determination pursuant to 47 U.S.C. § 251, Qwest’s authority to provide in-region long distance service in South Dakota is expressly conditioned upon its non-discriminatory provision to its competitors of essential network elements and services contained in 47 U.S.C. § 271(c)(2)(B), including local switching and shared transport. The failure by Qwest to continue providing these elements and services risks revocation of its Section 271 authority. 47 U.S.C. § 271(d)(6)(A)(iii). Furthermore, Qwest must offer competitive checklist items pursuant to “binding *agreements that have been approved under section 252[.]*” 47 U.S.C. § 271(c)(1)(A) (emphasis added).

47 U.S.C. § 271(c)(2)(A) establishes the requirements by which a BOC may be authorized to offer in-region long distance service. One of the requirements is the filing and approval of interconnection agreements under Section 252.

(A) Agreement required

A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

- (i) (I) such company is providing access and interconnection pursuant

to one or more agreements described in paragraph (1)(A),

or

(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B),

and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

Significantly, Section 271(c)(2)(A) is written in the present tense. At any given moment, Qwest is qualified to provide long-distance service only if it is complying with two essential requirements: (1) “access and interconnection” must be offered “pursuant to one or more agreements described in [Section 271(c)](1)(A)”⁹ and (2) such “access and interconnection” must include the checklist items specified in subparagraph (B). 47 U.S.C. § 271(c)(2)(A)(ii).

The agreements described in Section 271(c)(1)(A) that constitute a requirement for Qwest’s authority to offer in-region long distance service are interconnection agreements approved under Section 252. Section 271(c)(1)(A) states:

(c) Requirements for providing certain in-region interLATA services

(1) Agreement or statement

A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought

(A) Presence of a facilities-based competitor

A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding *agreements that have been approved under section 252* of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A) of this title, but excluding exchange access) to residential and business subscribers.

⁹ 47 U.S.C. § 271(c)(2)(A)(i)(I). Alternatively, under (c)(2)(A)(i)(II) such “access and interconnection” can be provided pursuant to a statement of generally available terms (SGAT) where no request for access and interconnection is made.

The agreements under which Qwest must offer mass market switching and transport to requesting carriers, therefore, must be agreements that are filed with the Commission and approved pursuant to Section 252.

The FCC has already addressed BOC attempts to evade the disclosure, review and opt-in protections of Section 252. Specifically, Qwest attempted to avoid its Section 252 obligations by requesting a declaratory ruling from the FCC that Section 271 network elements were not required to be provided in filed interconnection agreements. The FCC rejected Qwest's request, determining that Section 252 creates a broad obligation to file agreements, subject to specific narrow exceptions that do not exempt Section 271 elements. In the *Qwest Declaratory Ruling*, the FCC made clear that any agreement addressing *ongoing* obligations pertaining to unbundled network elements – and the access and unbundling obligations of Section 271 fall squarely within that definition – must be filed in interconnection agreements subject to Section 252 and also that, to the extent any question remains regarding those obligations, the state commissions are to decide the issue.

Further, the FCC has also always recognized that it is essential that BOCs demonstrate compliance with Section 271 through binding and lawful Section 252 interconnection agreements containing specific terms and conditions implementing the competitive checklist. The FCC has made it clear that when a competitive LEC requests a particular checklist item, a BOC “is providing” that item and is complying with Section 271(c)(2)(A) only if it has a “concrete and specific legal obligation to furnish the

item upon request *pursuant to state-approved interconnection agreements* that set forth prices and other terms and conditions for each checklist item.”¹⁰

Accordingly, in addition to its duty to negotiate found in Section 251(c)(1), Qwest having volunteered to meet the conditions required of a BOC that seeks to provide interLATA services, is also obligated by Section 271 to negotiate and (if necessary) arbitrate the particular terms and conditions of each of the Section 271 competitive checklist items that CLEC may request, which items include mass market switching and shared transport. If Qwest refuses to do so and thus does not enter into binding interconnection agreements *under Section 252* regarding mass market switching and the other competitive checklist items, then Qwest would plainly have “cease[d] to meet” one of the essential conditions of section 271,¹¹ namely, an “agreement[] that has been approved under section 252[.]”¹²

III. CONCLUSION

It is clear that the Act requires Qwest to negotiate with CLECs for the provision of network elements. The Act permits Qwest and CLECs to negotiate terms outside the standards of Section 251(b) and (c). However, the Act is also clear that all negotiated agreements for network elements must be filed with this Commission for approval.

Qwest seeks to make a legal distinction that does not exist in the Act. The QPP™ MSA provides for network elements as defined by the Act. In fact, Qwest calls the services network elements. It is a voluntary negotiated agreement. Qwest may argue that the elements are not provided under Sections 251(b) and (c), but a plain reading of the

¹⁰ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶ 110 (emphasis added).

¹¹ 47 U.S.C. § 271(d)(6)

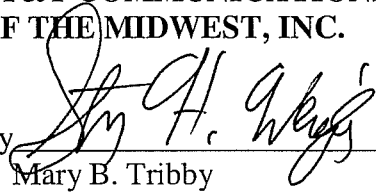
¹² *See* § 271(c)(2)(A) (“Agreement *required*”) (emphasis added).

Act requires that negotiated agreements for network elements must be filed for approval with the state commission. Accordingly, this Commission should require Qwest to seek approval of the QPP Agreement.

Submitted this 23rd day of August, 2004.

**AT&T COMMUNICATIONS
OF THE MIDWEST, INC.**

By


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CERTIFICATE OF SERVICE

TC04-144

I hereby certify that on August 20, 2004, the original and 10 copies of AT&T Communications of the Midwest, Inc.'s Comments on MCI's Application for Review and Approval of a Master Services Agreement Between Qwest Corporation and MCImetro Access Transmission Services, LLC, were sent by overnight delivery service to:

Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and a true and correct copy was sent by U.S. Mail on August 20, 2004, addressed to:

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Denver, CO 80202

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MCI
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AUG 23 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

HAND DELIVERED

Pam Bonrud, Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: **MCI METRO ACCESS; IN THE MATTER OF THE FILING FOR
APPROVAL OF MASTER SERVICES AGREEMENT BETWEEN QWEST CORP.
AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC**
Docket: TC04-144
Our file: 0175

Dear Pam:

Enclosed are original and ten copies of MCImetro Access Transmission Services' Response to Qwest Motion to Dismiss in this docket. Please file the enclosure.

With a copy of this letter, I am sending a copy of the motion to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service List

Tom Dixon

RECEIVED

AUG 23 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR	)	DOCKET NO. 04-144
APPROVAL OF A MASTER SERVICES)	
AGREEMENT BETWEEN QWEST)	
CORPORATION AND MCImetro ACCESS	)	RESPONSE TO QWEST
TRANSMISSION SERVICES, LLC	)	MOTION TO DISMISS

MCImetro Access Transmission Services, LLC (“MCImetro”) files its response to Qwest’s motion to dismiss filed in this docket on or about August 16, 2004. For the reasons stated below, MCImetro opposes the motion.

INTRODUCTION

Qwest Corporation moved to dismiss any review and approval of what is known as the Qwest Master Services Agreement (the “Commercial Agreement”) under which Qwest agreed to provide to MCImetro Qwest Platform Plus™ services under Section 271 of the federal Telecommunications Act of 1996 (“federal Act”). These Section 271 services consist primarily of local switching and shared transport *network elements* in combination with certain other services. (Emphasis supplied.)¹

In support of its motion, Qwest states that the Commercial Agreement expressly provides that it does not amend or alter the terms and conditions of any existing interconnection agreements (“ICA”) between MCI and Qwest. Qwest also states that since the Commercial Agreement contains no terms and conditions for services that Qwest must provide under Section 251(b) and (c) it is not an ICA or an amendment to an ICA between Qwest and MCI.

¹Qwest’s Motion to Dismiss, page 1.

Accordingly, Qwest argues that this Commission has no authority under Section 251 or 252 of the federal Act to review or approved the Commercial Agreement.²

Relevant sections of the portion of the Commercial Agreement entitled “Qwest Master Services Agreement” provide in pertinent part:

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date regarding Qwest’s obligation under Section 271 of the Act to continue to provide certain Network Elements (“Existing Rules”).

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

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

Finally, that portion of the Commercial Agreement entitled Service Exhibit 1 - Qwest Platform Plus™ Service provides in Section 1.1 entitled “General QPP™ Service Description”:

QPP™ services shall consist of the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) and the Shared Transport Network Element in combination, at a minimum to the extent

²*Id.* at pages 1-3.

available on UNE-P under the applicable interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, "ICAs") as the same existed on June 14, 2004.

ARGUMENT

A. Federal Law requires that the Commercial Agreement be filed for Review and Approval.

Section 252(a)(1) of the federal Act, entitled "Voluntary Negotiations" states:

(1) 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, including any interconnection agreement negotiated before the date of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

Section 252(e)(1) and (3) provide in part:

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

(3) Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

This section was interpreted by the Federal Communications Commission ("FCC") in October 2002. The FCC stated:

7. . . .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

8. . . . 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

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.³

As noted by Qwest, footnote 26 referenced in Paragraph 8 states: “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). However, in March 2004, in its Notice of Apparent Liability for Forfeiture issued to Qwest, the Commission states in Paragraph 21: “We have historically given broad construction to Section 252(a)(1)” The FCC goes on to state that:

any 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).

In this latter instance, the FCC does not limit its direction to only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).⁴ Because this agreement creates an ongoing obligation pertaining to Qwest’s provision of unbundled network elements (albeit pursuant to Section 271, not Section 251/252), the parties have an obligation to file the Commercial Agreement with the state so that the state can determine whether the Commercial Agreement discriminates against a telecommunications carrier not a party to the Commercial Agreement and whether approval of the Commercial Agreement is not consistent with the public interest, convenience and necessity as described in Section 252(e)(2)(A). Thus, MCI believes the Commercial Agreement must be filed with the state under federal law.

³Memorandum Opinion and Order FCC 02-276 issued in WC Docket 02-89, entitled *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)*, Paragraphs 7, 8 and 10.

⁴*In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH- 0263, NAL Account No. 200432080022, FRM No. 0001-6056-25, Paragraph 22.

B. The Commercial Agreement must be filed under State Law for Review and Approval.

Section 49-31-81, SDCL, entitled “Carrier to provide services to competitive telecommunications services provider” provides in pertinent part:

The commission may implement and comply with the provisions of the federal Telecommunications Act of 1996, including the promulgation of rules pursuant to chapter 1-26. Except to the extent a local exchange carrier is exempt from or has received a suspension or modification pursuant to 47 U.S.C. § 251(f)(1) or 251(f)(2), as of January 1, 1998, and the provisions of this chapter, the carrier shall provide interconnection, network elements, and other telecommunications services to any provider of competitive telecommunications services that requests such interconnection and services to the extent required by 47 U.S.C. §§ 251(a) to 251(c), inclusive, as of January 1, 1998. If the parties are unable to voluntarily negotiate an agreement for the interconnection or services requested, either party may petition the commission to mediate or arbitrate any unresolved issues as provided in 47 U.S.C. § 252. The provisioning of interconnection, network elements, and other telecommunications services to the extent required by 47 USC §§ 251(a) to 251(c), inclusive, by a local exchange carrier pursuant to this section is not subject to §§ 49-31-1.1 to 49-31-1.4, inclusive, 49-31-3.1 to 49-31-4, inclusive, 49-31-12.2, 49-31-12.4, 49-31-12.5, and 49-31-18 and 49-31-19, inclusive.

Rule 20:10:32:21, entitled “Submission of negotiated agreement for approval” provides:

An agreement for interconnection, network elements, and other telecommunications services negotiated pursuant to SDCL 49-31-81 must be submitted to the commission for approval. Each party to the negotiated agreement shall submit a complete copy of the agreement, including any attachments. Each party shall also submit a summarization of the main provisions of the agreement, including a statement of why the agreement does not discriminate against any non-party carrier and is consistent with the public interest, convenience, and necessity.

As stated by Qwest in its motion, the Section 271 services provided under the Commercial Agreement consist primarily of local switching and shared transport *network elements* in combination with certain other services. MCI believes that the Commercial Agreement must be submitted to the Commission for approval for a determination whether the negotiated

amendments discriminate against nonparty telecommunications carriers or lack consistency with the public interest, convenience, and necessity, or lack of consistency with applicable state law requirements. Qwest's assertion that state regulation concerning filing and review requirements is presumptively preempted by the FCC and federal law⁵ is not correct. Filing the Commercial Agreement with this Commission it is not inconsistent because both federal law and state law require filing.

On August 3, 2004, the Michigan Public Service Commission addressed the filing of agreements entered into by SBC Michigan ("SBC") and Sage Telecom, Inc. ("Sage") under Section 252.⁶ As stated by the Michigan Commission in its order:

On April 3, 2004, SBC Communications, Inc., the corporate parent of SBC Michigan, issued a press release indicating that SBC had entered into a seven-year "commercial agreement" with Sage Telecom, Inc. (Sage), concerning SBC's provision of telecommunications services to Sage in Michigan and several other states.

On April 28, 2004, the Michigan Commission ordered SBC and Sage to file that agreement in its entirety with the Commission for review pursuant to Section 252(a) and (e) of the federal Telecommunications Act of 1996 (FTA), 47 USC 252(a) and (e), . . . In addition, the Michigan Commission found that its jurisdiction over the agreement at issue was not limited to the federal Act, citing Section 355 of the Michigan Telecommunications Act, 1991 PA 179, as amended, MCL 484.2101 et seq. ("MTA"). The Commission stated that under the MTA a provider of basic local exchange service such as SBC must unbundle and separately price each

⁵Qwest Motion to Dismiss at page 8.

⁶In the matter of the request for Commission approval of an interconnection agreement between SBC Michigan and Sage Telecom, Inc., Case No. U-13513, and In the matter, on the Commission's own motion to require SBC Michigan and Sage Telecom, Inc., to submit their interconnection agreement for review and approval, Case No. U-14121.

basic local exchange service offered by the provider into loop and port components. The Commission also noted that Section 355 obligates a provider to “allow other providers to purchase such services on a nondiscriminatory basis.”

The Michigan PSC found that it has broad discretion under Section 252 for determining whether an agreement between an incumbent local exchange carrier and a competitive local exchange carrier must be filed. The Michigan Commission cited the FCC ruling wherein the FCC addressed this issue when Qwest faced litigation regarding its intentional failure to file secret interconnection agreements in Minnesota. In ruling against Qwest, the FCC stated 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) citing the Qwest Declaratory Ruling Order.”

The Michigan Commission found that most of the provisions of Sage Commercial Agreement and the eighth amendment qualify for review and approval under the federal Act. Specifically, the Michigan Commission concluded that, except for the commercially sensitive information redacted from the public version of the agreement filed by SBC and Sage, the remainder of the Commercial Agreement and eighth amendment are subject to the Commission’s review and approval.

The Michigan Commission also found that:

SBC and Sage should be obligated to make the LWC Agreement pricing schedule public. The Commission finds that the LWC Agreement pricing schedule, which is an attachment to the LWC Agreement, is an integral part of the arrangement that must be disclosed. Further, any of the redacted provisions of the LWC Agreement that refer to the pricing schedule should also be disclosed. The FCC’s recent decision to change its “pick and choose” rule (47 CFR 51,809) to an “all or

nothing” rule provides further support for requiring the disclosure of the bulk of the LWC Agreement because there is no reason for SBC to now claim that a provider can choose to be bound by only certain provisions of the agreement and attempt to negotiate better terms regarding those provisions not chosen.

Here like the SBC/Sage LWC Agreement, the Commercial Agreement is an integral part of the arrangement and available under the FCC’s recent “all or nothing” pick and choose rule.

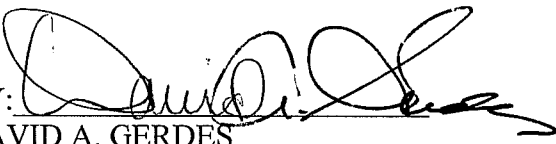
Therefore, for the reasons stated, Qwest’s motion to dismiss should be denied.

Dated this 23rd day of August, 2004.

MCImetro ACCESS TRANSMISSION
SERVICES, LLC

Thomas F. Dixon, #500
707 – 17th Street, #4200
Denver, Colorado 80202
Telephone: 303-390-6206
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MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 23rd day of August, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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SD Public Utilities Commission
500 East Capitol Avenue
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1801 California Street, #4700
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October 5, 2004

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RECEIVED

OCT 06 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RE: In The Matter Of The Filing For Approval Of A Master Services Agreement Between
Qwest Corporation And MCImetro Access Transmission Services, LLC
Docket Number: 04-144
Our file: 0175

Dear Pam:

Enclosed for filing please find an original and ten copies of a Supplement to Response to Qwest's Motion to Dismiss in the above referenced action. By copy of this letter service is made on the service list.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Service List
Tom Dixon

RECEIVED

OCT 06 2004

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR) APPROVAL OF A MASTER SERVICES) AGREEMENT BETWEEN QWEST) CORPORATION AND MCImetro ACCESS) TRANSMISSION SERVICES, LLC)

DOCKET NO. 04-144

SUPPLEMENT TO RESPONSE TO QWEST'S MOTION TO DISMISS

MCImetro Access Transmission Services, LLC ("MCImetro") hereby files this supplement to its response to Qwest's Motion to Dismiss filed in the docket on or about August 23, 2004. The attachment is an order with opinion of the Utah Public Service Commission denying Qwest's Motion to Dismiss which was issued on September 30, 2004. The Utah Public Service Commission concluded that the QPP Service Agreement should be filed and that the Commission does have authority to review and approve the QPP Service Agreement.

Dated this 5 day of October, 2004.

MCImetro ACCESS TRANSMISSION SERVICES, LLC

Thomas F. Dixon, #500 707 17th Street, #4200 Denver, Colorado 80202 303-390-6206 303-390-6333 (FAX)

MAY, ADAM, GERDES & THOMPSON LLP

BY: [Signature]

BRETT M. KOENECKE Attorneys for MCImetro Transmission Services, LLC 503 S. Pierre Street PO Box 160 Pierre, South Dakota 57501-0160 605-224-8803 605-224-6289 (FAX)

CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP, hereby certifies that on the 5 day of October, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Rolayne Wiest
SD Public Utilities Commission
500 E. Capitol Avenue
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Brett Koenecke

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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

ISSUED: September 30, 2004

By The Commission:

On July 27, 2004, MCImetro Access Transmission Services, LLC (MCI) filed with the Commission two documents B 1. An Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts (Interconnection Agreement Amendment), and 2. A Master Service Agreement for the Provision of Qwest Platform Plus Service (QPP Service Agreement). The Interconnection Agreement Amendment essentially makes three changes to an existing interconnection agreement between MCI and Qwest Corporation (Qwest). They are - 1. Adding the terms and conditions for hot cut batches, 2. An agreement that Qwest will not offer, nor will MCI order, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport as part of the unbundled network element platform (UNE-P) out of the existing interconnection agreement or other agreement governed by 47 U.S.C. " 251 and 252, and 3. The availability of line splitting for loops provided pursuant to the existing interconnection agreement. The QPP Service Agreement is a voluntarily negotiated agreement between MCI and

Qwest by which Qwest will provide services (QPP services) consisting of “the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, “ICAs”) as the same existed on June 14, 2004.” The QPP Service Agreement also provides that Qwest will combine the QPP services with loops which MCI may have obtained through other interconnection agreements. The QPP Service Agreement further provides for the performance targets and the recurring and nonrecurring charges for QPP services. Through its filing, MCI requested Commission review and approval of the Interconnection Agreement Amendment and the QPP Service Agreement.

On August 13, 2004, Qwest filed a Motion to Dismiss Application for Approval of Negotiated Commercial Agreement (Dismissal Motion). Qwest agrees that the Interconnection Agreement Amendment is subject to filing and Commission review and approval, but argues that is not the case for the QPP Service Agreement. Qwest argues that the QPP Service Agreement does not need to be submitted to the Commission pursuant to 47 U.S.C.'252. Qwest argues that the QPP services are not required to be provided pursuant to 47 U.S.C.'251 (b) and (c). Qwest therefore concludes that the QPP Service Agreement is not an interconnection agreement which is subject to

the Commission's review and approval under '252. Qwest argues that the Commission has no authority under federal or state law to review or approve the QPP Services Agreement. Multiple parties filed opposition to the Dismissal Motion. On August 23, 2004, MCI filed its Response to Qwest's Motion to Dismiss. On August 27, 2004, the Division of Public Utilities (Division) filed its Response in Opposition to the Motion of Qwest to Dismiss and Application for Approval of an Interconnection Agreement. On August 25, 2004, AT&T Communications of the Mountain States, Inc., and TCG Utah (ATT) filed ATT's Response to MCI's Agreement Filing and Qwest's Motion to Dismiss¹. On August 31, 2004, and again on September 9, 2004, Qwest replied to the opposing arguments of MCI, the Division and ATT. We conclude that Qwest's argument is in error. We conclude that the QPP Service Agreement should be filed and that the Commission does have authority to review and approve the QPP Service Agreement.

DISCUSSION

Much of the parties' argument is based upon the application of 47 U.S.C. " 251 and 252 provisions and two FCC decisions.² With respect to agreement submission to state commissions, 47 U.S.C. '252 provides, in relevant part:

(a) Agreements Arrived At Through Negotiation. B (1) Voluntary Negotiations. - Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without

¹ATT also sought intervention, which was granted September 17, 2004.

²The parties also make argument on statutory provisions beyond what is address in this order. Our resolution made herein is not intended to be any determination based on those arguments.

regard to the standards set forth in subsection (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

...

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

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

In *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-98, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) (Declaratory Order) the FCC responded to a request for guidance about the types of negotiated contractual arrangements that should be subject to the filing requirement of '252(a)(1). Before the FCC, Qwest argued that agreements subject to the filing requirement are those that “include (i) a description of the service or network element being offered;

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

In reaching its resolution, the FCC first noted that it is the state commissions who will determine what agreements are subject to the filing requirement. *Id.*, at & 7. “Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an ‘interconnection agreement’ and, if so, whether it should be approved or rejected.” *Id.*, at & 10. The FCC’s conclusion on the issue presented was that “an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).” *Id.*, at & 8. The QPP Service Agreement is subject to the filing requirement required by the statute and under the Declaratory Order’s

conclusion. Its terms fall within '252's rubric of "interconnection, services, or network elements," its terms deal with network elements and the compensation to be paid for them. QPP services are unavoidably network elements under 47 U.S.C.'153 (45)'s definition. The QPP Service Agreement addresses ongoing obligations for matters within the list give by the FCC in the Declaratory Order decision.

Qwest's argument before us, for a contrary conclusion, is similar to its argument before the FCC - *vis*, only agreements dealing with network elements which a carrier does not voluntarily agree to provide, but is compelled to provide through the FCC's determination under '251(d)'s "necessary" and "impair" analysis, trigger '252 (a)(1)'s filing requirement. Qwest's position is based on language contained in footnote 26 of the Declaratory Order.³ There, the FCC states:

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

³Qwest argues that the FCC followed Qwest's position in *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, NAL Account No. 200432080022, FRM No. 0001-6056-25.

We do not apply this language in as limiting a fashion as advocated by Qwest. We consider the FCC's footnote 26 language as addressing the contentions made by the comments identified therein. These comments had advocated that the '252(a)(1) filing requirement should be applied to every agreement between an incumbent LEC and another carrier. It was also suggested that '252 included settlement agreements that resolved past disputes. The FCC rejected these comments, concluding that agreements that should be filed are not every type of agreement between carriers, but interconnection agreements - those that deal with ongoing obligations dealing with resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation. *Id.*, at & 8.⁴ The language from the footnote must be considered in conjunction with the language used in the body of the Declaratory Order and the statutory language. The operative consideration is whether the agreement's terms address or create an ongoing obligation dealing with interconnection, services or network elements.

⁴However, when an agreement deals with these matters, not on a going basis, but on an after-the-fact, settlement of past conduct basis, the FCC concluded that it is not subject to the '2552(a)(1) filing requirement. *Id.*, at & 12.

Reading '252's filing requirement, and state commission approval or rejection, to apply only to an agreement whose terms address a compelled '251 matter, rather than to all interconnection agreements dealing with such matters (whether included by voluntary negotiation or by compulsion), completely ignores the specific language of the statute. Congress did task the FCC with responsibility to determine what minimal access to network elements, required under '251(c)(3), would be compelled through '252(d)'s "necessary" and "impair" standards. But in wording '252, Congress did not restrict the need to file agreements with state commissions to only those agreements whose terms address interconnection, services, or network element matters by compulsory mandate related to '251(b) or (c). Congress created a wider ambit. Congress required filing and state commission approval or rejection of agreements where the incumbent local exchange carrier "negotiate[s] and enter[s] into a binding agreement with a requesting telecommunications carrier or carriers without regard to the standards set forth in subsection (b) or (c) of section 251. . . . The agreement shall be submitted to the State commission under subsection (e) of this section."⁵ 47 U.S.C. '252(a)(1). Congress clearly anticipated agreements that would not be driven by '251(b) or (c). It required these agreements to be filed with and reviewed by state commissions. To do otherwise fails to give any attention to the specific language Congress used in enacting '252.

⁵ In the same section (part of the ellipsis in the quoted portion), Congress also required that interconnection agreements negotiated prior to enactment of the 1996 Federal Telecommunications Act (which necessarily could not have been negotiated with regard to or had terms intended to address then nonexistent '252(b) or (c) standards) be submitted to state commissions under '252(e). *See*, '252(a)(1). This is further evidence of Congress' intent that all interconnection agreements, not just those attempting to comply with compelled provision related to '251(b) and (c), pass under state commission review.

That Congress includes all interconnection agreements for state commission filing and review, and not just those that address compelled interconnection terms, is not unwarranted. Qwest's limitation, to include only agreements whose terms address network elements whose provision is compelled, fails to recognize the differing concerns contemplated by Congress. The criteria by which the FCC is to base compelled provision are not coterminous with the criteria by which a state commission is to approve or reject an agreement. Mandatory provision is minimally based upon '251(d)(2)'s test that access to a proprietary network element is necessary and that lack of access to a network element impairs a carrier's ability to provide services. 47 U.S.C. '252(d)(2)(A) and (B). State commission review of an agreement is based on entirely different criteria. A state commission can only reject a voluntarily negotiated agreement if the state commission finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C.'252(e)(2)(A). A state commission can reject an arbitrated agreement if it finds the agreement does not meet the requirements of '251 or '252(d).⁶ 47 U.S.C. '252(e)(2)(B). Compelled aspects are driven by concerns for the interests of the requesting carrier. Filing and state commission review are driven by concerns for interests of

⁶That Congress directs state commission review to consider ' 251 requirements in a separate subsection part dealing with review of arbitrated agreements, and makes no such reference in the subsection part dealing with review of voluntarily negotiated agreements, is further evidence of Congress= view that state review of voluntarily negotiated interconnection agreements is not limited by ' 251(b) or (c) directive.

other entities and public interests. These concerns go beyond those relating to the incumbent carrier and the interconnecting carrier whose agreement is at issue.

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

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

easily be viewed as directly contradicting the position advocated by Qwest. Section 252 filing and review is not limited by '251 compulsory provision determinations, it is required in spite of such determinations.

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

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

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

DOCKET NO. 04-2245-01

-12-

/s/ Julie Orchard
Commission Secretary
GW#40491



Qwest
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Denver, Colorado 80202
Phone 303 383 6643
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Melissa.Thompson@qwest.com

Melissa Thompson
Senior Attorney

October 7, 2004

RECEIVED
OCT 08 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pamela Bonrud, Executive Director
Public Utilities Commission of the State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: Qwest Corporation's Joint Reply to MCImetro's Response to Qwest Motion to Dismiss and to AT&T's Comments

Dear Ms. Bonrud:

Please find enclosed for filing the original and ten copies of Qwest Corporation's Joint Reply to MCImetro's Response to Qwest Motion to Dismiss and to AT&T's Comments. Please return a date-stamped copy of the Reply in the envelope provided.

Please contact me if you have any questions or concerns regarding this filing.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa K. Thompson", with a long horizontal line extending to the right.

Melissa K. Thompson

Encl.

cc: Larry Toll (w/o encl.)
Colleen Sevold (w/ encl.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
OCT 08 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Interconnection Agreement Between QWEST CORPORATION and MCIMETRO ACCESS TRANSMISSION SERVICES, LLC, for Approval of an Amendment for Elimination of UNE-P and Implementation of Batch Hot Cut Process and QPP Master Service Agreement

TC 04-144

**QWEST CORPORATION'S JOINT
REPLY TO MCIMETRO'S
RESPONSE TO QWEST MOTION
TO DISMISS AND TO AT&T'S
COMMENTS**

In support of its Motion to Dismiss, Qwest Corporation ("Qwest") submits this Reply to the Response filed by MCImetro Access Transmission Services, LLC ("MCImetro") and to the Comments filed by AT&T Communications of Midwest, Inc, ("AT&T"), sometimes collectively referred to herein as Respondents. Qwest states:

I. INTRODUCTION

The agreement that is the subject of Qwest's Motion to Dismiss is the "Qwest Master Services Agreement" (the "Commercial Agreement"), under which Qwest has agreed to provide to MCImetro Qwest Platform PlusTM services under section 271 of the Telecommunications Act of 1996 ("federal Act").¹ In MCImetro's Response to Qwest's Motion to Dismiss, and in AT&T's Comments, the Respondents do not dispute that the Commercial Agreement provides for section 271 services consisting primarily of local switching and shared transport, in combination with other services. Instead, they argue that the Commercial Agreement must be filed with, and approved by, this Commission pursuant to section 252 of the federal Act in order:

¹ MCImetro Response, p. 1.

(1) to preserve the status quo (MCImetro) and (2) to prevent the possibility of discrimination and because such filing is allegedly required under section 271 (AT&T)².

However, each of the Respondents has failed to address the plain -- and critical -- findings in two controlling opinions that govern this matter, one from the FCC and the other from the United States Court of Appeals for the District of Columbia.³ These critical rulings definitively establish that the Commercial Agreement is not subject to either section 251 or 252 and is, therefore, not subject to review and approval by this Commission.

First, as unequivocally stated by the FCC, “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).**”⁴ This finding by the FCC could not be clearer. Second, as stated by the *USTA II* court, “[w]e vacate the Commission’s subdelegation to state commissions of decision-making authority over impairment determinations . . . for mass market switching and certain dedicated transport elements (DS1, DS3 and dark fiber). We also vacate and remand the Commission’s

² Though Qwest is including AT&T in this combined Reply, Qwest does not concede, and does not believe, that AT&T should be allowed to participate in this docket. Given AT&T's recent decision and public announcement that it is turning away from “wireline residential telephone services,” AT&T does not appear to have any direct and substantial interest whatsoever in this proceeding. AT&T publicly stated “[a]s a result of recent changes in regulatory policy governing local telephone service, AT&T will no longer be competing for residential local and standalone long distance (LD) customers.” A copy of AT&T's public statement is attached to this Reply as Exhibit A. Further, although AT&T admits in its Comments that Qwest has made the Commercial Agreement available to each of its in-region state commissions, and that Qwest has offered the Commercial Agreement to any interested CLEC assuming the same obligations as MCImetro, to date AT&T has consistently refused to adopt the Commercial Agreement. Thus, AT&T's arguments concerning the potential for this Commercial Agreement to be used to discriminate against telecommunications carriers who are not parties to the agreement is both confusing and unfounded.

³ See Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, 17 FCC Rcd 19337, 2002 FCC Lexis 4929 (October 4, 2002) (“*Declaratory Order*”) and *United States Telephone Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

⁴ *Declaratory Order*, ¶8, footnote 26 (emphasis added).

nationwide impairment determinations with respect to these elements.”⁵ Consequently, Qwest is no longer obligated to provide unbundled access to local switching or shared transport pursuant to section 251 of the federal Act. The FCC’s *Declaratory Order* is clear that an agreement relating to section 251 elements is not required to be filed for approval pursuant to section 252.

II. ARGUMENT

Because the Commercial Agreement at issue in this docket does not pertain to the provisioning of network elements that Qwest is required to provide under sections 251(b) and (c) of the federal Act, the Commercial Agreement is not an “interconnection agreement” that must be filed under section 252(a)(1) of the federal Act.

A. The FCC’s Orders Stand For The Proposition That Only Agreements Pertaining To The Provisioning Of Network Elements Pursuant To Sections 251 (b) And (c) Of The Federal Act Must Be Filed With The Commission Pursuant To Section 252(a)(1).

The cornerstone of MCImetro’s argument appears to be that any agreement that concerns the provisioning of “network elements” must be filed with the Commission for approval. MCImetro bases this conclusion on the following quote from the FCC’s *Notice of Apparent Liability for Forfeiture*.⁶ The quote is set forth below as it appears in MCImetro’s Response:

... in March 2004, in its Notice of Apparent Liability for Forfeiture issued to Qwest, the Commission states in Paragraph 21: “We have historically given broad construction to Section 252(a)(1)” The FCC goes on to state that:

any agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network

⁵ *USTA II*, 359 F.3d at 594.

⁶ *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, NAL Account No. 200432080022, FRM No. 0001-6056-25, Paragraph 22 (“*Notice of Apparent Liability for Forfeiture*”).

elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a) (1).

In this latter instance, the FCC does not limit its direction to only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).⁷

MCImetro's claim – that the FCC does not limit the agreements to be submitted for review to those that contain an ongoing obligation relating to sections 251(b) and (c) – is directly refuted by a footnote that MCImetro omits. This footnote appears at the end of the passage above that MCImetro quotes from the FCC's Notice of Apparent Liability:

⁷⁰ . . . The sentence quoted in the text is a summary of the interconnection obligations listed in section 251 of the Act. 47 U.S.C. § 251⁸

Contrary to MCImetro's assertion, even in the *Notice of Apparent Liability for Forfeiture*, the FCC was careful to limit the section 252(a)(1) filing requirement to only those agreements that contain an ongoing obligation related to network elements offered under section 251.

AT&T also relies on the FCC's decision in the *Notice of Apparent Liability for Forfeiture* for its central argument. In its Comments, AT&T argues “[s]ection 252 requires that such an agreement be filed with the state commission, however, so that the state commission can fulfill its statutory mandate to ensure that the agreement is nondiscriminatory.”⁹ Yet, the FCC's *Notice of Apparent Liability for Forfeiture* was based on, and specifically referred to, the FCC's earlier *Declaratory Order* in which the FCC specifically rejected the idea that all agreements between an ILEC and a CLEC must be filed with a state commission for its approval. In the *Declaratory Order*, the FCC stated:

⁷ MCImetro Response, p. 4, quoting *Notice of Apparent Liability for Forfeiture*, ¶ 22.

⁸ *Notice of Apparent Liability for Forfeiture*, Footnote 70, p. 13.

⁹ AT&T Comments, p. 8 (citing *Notice of Apparent Liability for Forfeiture* ¶ 47).

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)**¹⁰ (emphasis added)

Because the Commercial Agreement includes what MCImetro characterizes as “network elements,” and because Qwest was previously required to provide these “network elements” pursuant to section 251(b) and (c) of the federal Act, MCImetro and AT&T erroneously conclude that the Commission must approve the Commercial Agreement pursuant to section 252(a)(1) of the federal Act. The critical distinction that these Respondents fail to note is the distinction between network elements that must be provided pursuant to section 251(b) and (c) of the federal Act, and network elements that are being provided pursuant to section 271 of the federal Act.¹¹

Only agreements pertaining to the provisioning of network elements under sections 251(b) and (c) of the federal Act must be filed with state commissions under section 252(a)(1) of the federal Act.¹² Agreements pertaining to the provisioning of network elements pursuant to section 271 of the federal Act do not need to be filed with state commissions under section 252(a)(1) of the federal Act. Neither MCI nor AT&T dispute the dispositive question regarding

¹⁰ *Declaratory Order*, ¶8, footnote 26 (emphasis added).

¹¹ Qwest notes that as part of its recent Order and Notice of Proposed Rulemaking, the FCC has sought comment on carriers’ obligations under section 252 to file commercial agreements with state commissions for approval where the agreements govern access to network elements for which there is no section 251(c)(3) unbundling obligation. Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, FCC No. 04-179, ¶ 13 (F.C.C. August 20, 2004).

¹² *Declaratory Order*, ¶8, footnote 26.

section 252 obligations – that is, they do not dispute that switching and shared transport are not today section 251 elements.

B. Section 271 Does Not Require BOCs To File Non-251 Agreements With State Commissions And Does Not Give State Commissions Authority To Approve Such Agreements.

AT&T also argues that section 271 itself requires Bell Operating Companies (“BOCs”) to file non-251 agreements with state commissions and gives state commissions authority to approve agreements containing terms and conditions for access to network elements provided under section 271. For several reasons, this argument is wrong.

A state administrative agency has no role in the administration of federal law, absent express authorization by Congress. This is so even if the federal agency charged by Congress with the law’s administration attempts to delegate its responsibility to the state agency.¹³ Here, no provision of the federal Act authorizes state commissions to impose or enforce obligations under section 271.¹⁴ Section 271(d)(3) expressly confers upon the FCC, not state commissions, the authority to determine whether BOCs have complied with the substantive provisions of section 271, including the “checklist” provisions upon which AT&T bases its argument. 47 U.S.C. § 271(d)(3). State commissions have only a non-substantive, “consulting” role in that determination. 47 U.S.C. § 271(d)(2)(B).¹⁵ As one court has explained, a state commission has

¹³ *USTA II*, 359 F.3d at 565-68.

¹⁴ See *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (S.D. Ind. 2003) (state commission not authorized by section 271 to impose binding obligations), *aff’d*, 359 F.3d 493 (7th Cir. 2004). Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 F.C.C. Rcd. 19,020 (2003) (“TRO”) at ¶¶ 186-87 (“states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations”).

¹⁵ See also *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (“section 271 clearly contemplates an advisory role for the [state commission], not a substantive role”). Sections 201 and 202, which govern the rates, terms and conditions applicable to the unbundling requirements imposed by section 271, likewise provide no role for state commissions. That authority has been conferred by Congress upon the FCC and federal courts. See 47 U.S.C. §§ 201(b) (authorizing the

a fundamentally different role in implementing section 271 than it does in implementing sections 251 and 252:

Sections 251 and 252 contemplate state commissions may take affirmative action towards the goals of those Sections, **while Section 271 does not contemplate substantive conduct on the part of state commissions. Thus, a “savings clause” is not necessary for Section 271** because the state commissions’ role is investigatory and consulting, not substantive, in nature.¹⁶

With respect to the interpretation and enforcement of non-251 obligations after a BOC’s receipt of authorization to provide InterLATA service in a state, section 271 does not provide even for a consulting role for state commissions. *See* 47 U.S.C. § 271(d)(6). In its Comments, AT&T presents a convoluted analysis under which it claims that the federal Act provides authority to states inferentially to approve non-251 agreements. And it does so without citing any language in the federal Act that confers section 271 decision-making authority on state commissions. An argument that states have inferential authority is no argument at all because an express grant of authority is required for states to be able to administer provisions of federal law. Moreover, section 271 is not reasonably susceptible to AT&T’s interpretation.

AT&T’s argument relies on section 271(c)(2)(B) which, according to AT&T, establishes access requirements for all network elements a BOC provides, including elements required by section 271, but not section 251 (“section 271 network elements”). According to AT&T, section 271(c)(2)(A) requires that access to section 271 network elements be provided, pursuant to

FCC to prescribe rules and regulations to carry out the Act’s provisions); 205 (authorizing FCC investigation of rates for services, etc. required by the Act); 207 (authorizing FCC and federal courts to adjudicate complaints seeking damages for violations of the Act); 208(a) (authorizing FCC to adjudicate complaints alleging violations of the Act). The FCC has thus confirmed that “[w]hether a particular [section 271] checklist element’s rate satisfies the just and reasonable pricing standard is a fact specific inquiry that **the Commission** [the FCC] will undertake in the context of a BOC’s application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6).” *TRO* at ¶ 664 (emphasis added).

¹⁶ *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 11 (emphasis added).

“binding agreements that have been approved under section 252.” Thus, AT&T's argument goes, state commissions have authority to approve terms and conditions relating to section 271 elements.

The first flaw in this argument is AT&T's contention that the “binding agreements” required under section 271(c)(1)(A) include agreements addressing access to section 271 elements. Section 271(c)(1)(A) refers expressly to “agreements that have been approved **under section 252,**” making it clear that the agreements referred to in that section are those that relate to section 252 – not section 271 – obligations. As discussed above, the FCC established in its *Declaratory Ruling* that the scope of section 252 agreements is limited to terms and conditions relating to the obligations imposed by sections 251(b) and (c). Accordingly, the reference in section 271(c)(1)(A) to agreements “approved under section 252” is limited to agreements that address section 251(b) and (c) obligations and does not include commercial agreements that address issues unrelated to those sections. That section therefore does not give states authority to review agreements containing terms and conditions for access to section 271 elements.¹⁷

Furthermore, AT&T's argument is contradicted by the provisions of the federal Act that define the authority of state commissions to approve interconnection agreements. Section 252(e)(1) authorizes state commissions to approve interconnection agreements “adopted by negotiation,” and the negotiations to which the section refers are those addressed in section 251(c)(1), which expressly relate only to the obligations imposed by sections 251(b) and (c).¹⁸ There is no mention anywhere in either section 251 or 252 of negotiations relating to section 271

¹⁷ Section 271(c)(1)(A) also does not impose any filing requirements for agreements. Instead, it only establishes as a requirement for obtaining long distance relief under Track A that there be a “facilities-based competitor” with whom the BOC has a binding agreement approved under section 252.

¹⁸ Section 251(c)(1) imposes on ILECs “[t]he duty to negotiate in good faith . . . the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of [section 251(b)] and this subsection.”

obligations or of state authority to approve negotiated agreements addressing section 271 obligations. The section 252(e)(1) authority of state commissions to approve negotiated interconnection agreements is limited, therefore, to agreements relating to section 251(b) and (c) obligations.

This conclusion is further supported by section 252(e)(6) of the Act, which grants parties the right to seek judicial review of state commission determinations relating to interconnection agreements. That section limits judicial review to "whether the agreement . . . meets the requirements of section 251 and this section." Significantly, Congress did not authorize courts to review agreements for compliance with section 271, demonstrating that Congress did not intend that state commissions would make any determinations relating to agreements that address section 271 obligations. If Congress had intended otherwise, it easily could have stated as much.

For these reasons, there is no merit to AT&T's contention that section 271 requires BOCs to file non-251 agreements with state commissions and gives state commissions authority to approve agreements containing terms and conditions for access to network elements provided under section 271.

C. The Commission's Rules Do Not And May Not Impose Unbundling Obligations That Are Inconsistent With Section 251 And The FCC's Implementation Of That Section Of The Federal Act.

MCImetro asserts that South Dakota Codified Law § 49-31-81 and South Dakota Administrative Code § 20:10:32:21 require the parties to file the Commercial Agreement with the Commission for its review and approval. MCImetro has misread the law.

South Dakota Codified Law § 49-31-81 specifically refers not once, but twice, to "interconnection and services to the extent required by 47 U.S.C. §§ 251(a) to 251(c)." South Dakota Administrative Rule 20:10:32:21 states that "An agreement for interconnection, network

elements, and other telecommunications services negotiated pursuant to SDCL 49-31-81 must be submitted to the Commission for approval." As just noted, § 49-31-81 pertains only to "interconnection and services to the extent required by 47 U.S.C. §§ 251(a) to 251(c)". The provisions of South Dakota law cited by MCImetro support Qwest's position, rather than MCImetro's. Qwest is no longer required to unbundle local switching and shared transport pursuant to section 251 (c) of the federal Act. The *USTA II* decision is clear on that point. Absent any obligation to unbundle these network elements under section 251, the Commission has no authority to review and approve, or review and reject, the Commercial Agreement. The Commission's only express authority to approve interconnection agreements springs from section 252(e)(1) of the federal Act, not from SDCL § 49-31-81 or ARSD 20:10:32:21. The Commercial Agreement is not an interconnection agreement under which Qwest is providing services or facilities pursuant to section 251 of the federal Act, or under which this Commission has any jurisdiction pursuant to section 252 of the federal Act. Thus, this Commission has no legal authority to approve or reject the Commercial Agreement under the federal Act, or under South Dakota law.

As Qwest explained in its Motion to Dismiss, whether the Commission has the power to review and approve the Commercial Agreement is a question of federal law governed by the provisions of the federal Act and the controlling federal authorities construing the federal Act. As Qwest noted previously, there are two primary controlling authorities in this docket: the decision of the United States Court of Appeals for the District of Columbia in *USTA II*, and the *Declaratory Order* that defines "the scope of the mandatory filing requirement set forth in section 252(a)(1)."¹⁹ Read together, these authorities definitively establish that the Commercial

¹⁹ *Declaratory Order* ¶ 1.

Agreement is not subject to either section 251 or 252 and is therefore not subject to review and approval by the Commission.

Finally, Respondents cite to various decisions from other states including from the Michigan Public Service Commission ("Michigan Commission"). The Michigan Commission ordered SBC Michigan ("SBC") and Sage Telecom, Inc. ("Sage") to file their Local Wholesale Complete agreement ("LWC") for approval, and then the Michigan Commission approved the agreement.²⁰ The *Michigan Commission Decision* and those cited by Respondents from the other states that reviewed the SBC Sage LWC are inapposite for several reasons.

In the *Michigan Commission Decision*, the Michigan Commission cited the FCC's *Declaratory Order* and determined that the federal Act required that the LWC be reviewed under section 251(a)(1).²¹ In reaching its conclusion, the Michigan Commission quoted the same language that MCImetro quotes, which is:

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).

And then, like MCImetro and AT&T, the Michigan Commission failed to cite the explanatory footnote that appears at the end of the passage. The FCC's *Declaratory Order* states:

²⁰ Order, *In The Matter, On The Commission's Own Motion, To Require SBC MICHIGAN And SAGE TELECOM, INC., To Submit Their Interconnection Agreement For Review And Approval*, Case Nos. U-13513 and U-14121 (Mi. P.S. Co. April 28, 2004); and Order, *In The Matter Of The Request For Commission Approval Of An Interconnection Agreement Between SBC MICHIGAN And SAGE TELECOM, INC. And In The Matter, On The Commission's Own Motion, To Require SBC MICHIGAN And SAGE TELECOM, INC., To Submit Their Interconnection Agreement For Review And Approval*, Case Nos. U-13513 and U-14121 (Mi. P.S. Co. (August 3, 2004)) ("Michigan Commission Decision").

²¹ *Michigan Commission Decision*, p. 15, quoting *Declaratory Order*, ¶ 8.

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)**²²

If one reads the entirety of the FCC's *Declaratory Order* and *Notice of Apparent Liability For Forfeiture* – including the footnote that MCImetro, AT&T and the Michigan Commission omitted from their analyses of the FCC's Orders – one can only conclude that the obligation to file an agreement with a state commission does not extend beyond those agreements that pertain to the provisioning of network elements pursuant to sections 251 (b) and (c). It appears that because the Michigan Commission misread the FCC's *Declaratory Order*, it did not analyze whether the LWC pertained to network elements provided pursuant to section 251(b) and (c) of the federal Act. The same flawed analysis appears to have been used by other state commissions, as cited by AT&T in its Comments. Because these state commissions did not engage in the required fundamental analysis of whether the LWC pertained to network elements provided pursuant to section 251(b) and (c) of the federal Act, they are of no value in terms of the issue to be decided here; namely, whether the federal Act requires the Commercial Agreement to be filed with this Commission for approval.

Unlike the LWC, Qwest has previously provided the Commercial Agreement to the Commission for informational purposes and is offering its terms and conditions to any carrier assuming the same obligations as MCImetro. As previously noted, although AT&T admits in its Comments that Qwest has made the Commercial Agreement available to each of its in-region state commissions, and that Qwest has offered the Commercial Agreement to any interested

²² *Declaratory Order*, ¶ 8, footnote 26 (emphasis added).

CLEC assuming the same obligations as MCImetro, to date AT&T has consistently refused to adopt the Commercial Agreement. As a result, many of the concerns expressed by AT&T and MCImetro regarding the potential for discrimination are simply inapplicable with respect to the Commercial Agreement.

III. CONCLUSION

For the reasons set forth herein, Qwest respectfully moves the Commission to dismiss the application for approval filed by MCImetro to the extent it seeks review and approval of the Qwest Master Services Agreement.

RESPECTFULLY submitted this 8th day of October, 2004.

QWEST COMMUNICATIONS CORPORATION

By: 

Melissa K. Thompson, Senior Attorney

QWEST SERVICES CORPORATION

1801 California Street

Denver, CO 80202

303-383-6643

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing **QWEST CORPORATION'S MCIMETRO'S RESPONSE TO QWEST MOTION TO DISMISS AND TO AT&T'S COMMENTS** was mailed, U.S. Mail, postage prepaid, to the following on this 10th day of October, 2004:

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OCT 21 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: MCI METRO ACCESS; IN THE MATTER OF THE FILING FOR
APPROVAL OF MASTER SERVICES AGREEMENT BETWEEN QWEST CORP.
AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC

Docket: TC04-144

Our file: 0175

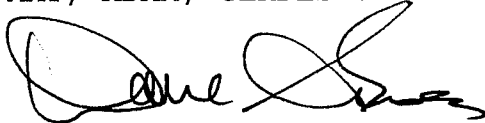
Dear Pam:

Enclosed are original and ten copies of a Supplement to
MCImetro's Response to Qwest's Motion to Dismiss in this docket.
Please file the enclosure.

With a copy of this letter, I am sending a copy of the motion to
the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service List

Tom Dixon

RECEIVED

OCT 21 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR) DOCKET NO. TC04-144
APPROVAL OF A MASTER SERVICES)
AGREEMENT BETWEEN QWEST) SUPPLEMENT TO MCIMETRO'S
CORPORATION AND MCIMETRO ACCESS) RESPONSE TO QWEST'S
TRANSMISSION SERVICES, LLC) MOTION TO DISMISS

MCImetro Access Transmission Services LLC ("MCImetro") files this supplement to its response to Qwest's motion to dismiss filed in this docket on August 23, 2004. Attached is an order of the New Mexico Public Regulation Commission denying Qwest's motion to dismiss (1) an amendment to the Interconnection Agreement between MCI and Qwest and (2) a Master Services Agreement. The New Mexico Commission reserves for another document the question of whether QPP/MSA agreements must be filed.

Dated this 21st day of October, 2004.

MCIMETRO'S ACCESS TRANSMISSION
SERVICES, LLC

Thomas F. Dixon, #500
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303-390-6206 (ph) 303-390-6333 (fx)

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 21st day of October, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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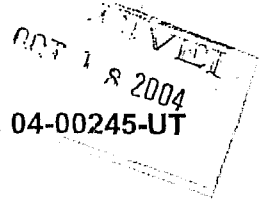
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David A. Gerdes

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE AMENDMENT)
TO THE INTERCONNECTION AGREEMENT)
BETWEEN MCI AND QWEST DATED)
JULY 16, 2004, AND THE MASTER SERVICES)
AGREEMENT BETWEEN MCI AND QWEST)
DATED JULY 16, 2004)

Case No. 04-00245-UT



ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") at the Open Meeting of October 12, 2004, pursuant to the filing and the request for approval pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), by MCImetro Access Transmission Services, LLC ("MCI") of two agreements between MCI and Qwest Corporation ("Qwest"): 1) an amendment to the Interconnection Agreement between MCI and Qwest ("Amended Agreement"); and 2) a Master Services Agreement. Being duly advised in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission approved the Statement of Generally Available Terms and Conditions for Interconnection, Tenth Revision, between MCI and Qwest by Final Order dated January 21, 2003, in Utility Case No. 3839.

2. On July 22, 2004, MCI filed the Amended Agreement and the Master Services Agreement (together, the "Agreements") with the Commission and requested approval thereof pursuant to the Act. The Amended Agreement adds "batch hot cut" terms and conditions and removes the unbundled network

element platform ("UNE-P") from the Interconnection Agreement. The Amended Agreement also references the Master Services Agreement. Both Agreements were executed on July 16, 2004

3. The Amended Agreement states that "both MCI and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in *United States Telecom Association v. FCC*, 359 F.3d 554 (March 2, 2004),¹ with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under [the Act]."

4. The Amended Agreement states that "to address such uncertainty and to create a stable arrangement for the continued availability to MCI from Qwest of services technically and functionally equivalent to the June 14, 2004 UNE-P arrangements, the parties have contemporaneously entered into a Master Service Agreement for the provision of Qwest Platform Plus service...

5. The Commission issued an Order Designating Hearing Examiner on July 28, 2004, which designated and appointed Marilyn S. Hebert as Hearing Examiner in this case.

6. The Hearing Examiner issued a Procedural Order and Notice on August 2, 2004 which, among other things: (a) found that Qwest is a Colorado Corporation that provides telecommunications services within the State of New Mexico and is regulated by the Commission; (b) found that Section 252(e) of the Act provides that any negotiated interconnection agreement shall be submitted for approval of the appropriate State commission, and if that

¹ *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C.Cir. 2004) ("UTSA II"). Certain parties have petitioned the Supreme Court of the United States to review and reverse this circuit court decision. The Supreme Court has not yet ruled on those petitions.

commission does not act to approve or reject such agreement within ninety (90) days after submittal, it shall be deemed approved; (c) found that the Agreements should be approved or rejected by the Commission on or before October 20, 2004; (d) ordered a prehearing conference to be held on August 26, 2004; (e) ordered that the Commission would consider the adoption of a Final Order disposing of this case at an Open Meeting held on October 12, 2004; (f) ordered that it was intended that no public hearing other than the Open Meeting would be held to receive evidence in this matter unless a Request for Rejection of the Agreements was filed on or before September 17, 2004, and any replies on or before September 22, 2004; (g) requested Staff to file an affidavit on or before September 24, 2004, concerning its review of the Agreements in the event Staff did not file a Request for Rejection; and (h) required MCI to publish the Procedural Order and Notice and to mail copies thereof to all persons on the Telecommunications Service List.

7. On August 5, 2004, Qwest filed a motion to intervene and on August 9, 2004, AT&T Communications of the Mountain States, Inc. ("AT&T") filed a motion to intervene, which motions were granted

8. On August 27, 2004, Qwest filed a Motion to Dismiss Application for Review of Negotiated Commercial Agreement arguing the Master Services Agreement is not subject to review and approval by the Commission pursuant to the following federal decisions construing the Act: the circuit court's USTA II decision; and the Federal Communications Commission's October 2002

decision defining "the scope of the mandatory filing requirement set forth in section 252(a)(1)" of the Act.²

9. MCI, AT&T and the Commission's Utility Division ("Staff") filed responses to Qwest's motion arguing that the Master Services Agreement is subject to the Act's filing requirements.

10. On June 29, 2004, the Commission issued an Order to Show Cause in Case No. 04-00209-UT ordering Qwest and DIECA Communications, d/b/a Covad Communications Company ("Covad") to file pleadings to explain why a certain Commercial Line Sharing Agreement between Qwest and Covad should not be filed with the Commission pursuant to Section 252 of the

That proceeding is currently pending before the Commission and is not subject to a 90-day time constraint. The issue of whether the Master Services Agreement is required to be filed should be considered together with whether the Commercial Line Sharing Agreement is required to be filed in Case No. 04-00209-UT. This issue should be deferred for consideration in Case No. 04-00209-UT, and Qwest's Motion to Dismiss Application for Review of Negotiated Commercial Agreement should be denied.

11. MCI filed a Certificate of Service on August 5, 2004, attesting that the Procedural Order and Notice was sent to the Telecommunications Service List on August 3, 2004.

² *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276 (rel. Oct. 4, 2002).

12. On August 25, 2004, an Affidavit of Publication was filed reflecting that the Procedural Order and Notice was duly published in the *Albuquerque Journal* on August 16, 2004.

13. Proper notice of this case has been provided

14. Section 252(e)(2)(A) of the Act provides that a State commission may only reject an agreement, or any portion thereof, adopted by negotiation under Section 252(a) of the Act if the Commission finds that: (a) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (b) the implementation of the agreement or portion is not consistent with the public interest, convenience and necessity.

15. On September 24, 2004, Staff filed an affidavit. On September 27, 2004, Staff filed an amended affidavit attesting that it had reviewed the Agreements and that they do not violate the standards set out in Section 252(e)(2)(A) of the Act. Staff also recommends the Commission find that any provision or term of the Agreements that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and is not in the public interest.

16. No Request for Rejection has been filed in this matter.

17. The Commission has jurisdiction over the parties and subject matter of this proceeding.

18. On October 8, 2002, the Commission issued its Final Order Regarding Compliance With Outstanding Section 271 Requirement: SGAT Compliance, Track A, and Public Interest in Utility Case No. 3269 and Utility

Case Nos. 3537, 3495 and 3750 ("271 Final Order"). In Utility Case No. 3537 the Commission expressly reserved the authority granted it by 47 U.S.C. § 252(f)(4) to continue its review of Qwest's Statement of Generally Available Terms and Conditions ("SGAT") and to decide all SGAT issues that have not been resolved in Utility Case Nos. 3537 or 3269 or that have not been resolved otherwise.

19. The Commission's approval of the Agreements should not be deemed, construed or otherwise considered as an endorsement or approval with respect to any particular application, interpretation or effect of the Federal Communications Commission's decision and rules adopted in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("Triennial Review Order" or "TRO").

20. There has been no showing that the Agreements discriminate against a telecommunications carrier not a party to the Agreements or that the implementation of the Agreements is inconsistent with the public interest, convenience and necessity as long as they are subject to any proceeding that the Commission may convene to review these and related issues, including but

not limited to Case Nos. 03-00403-UT and 03-00404-UT, both of which cases are currently being held in abeyance by the Commission.

THE COMMISSION THEREFORE ORDERS:

A. Qwest's Motion to Dismiss Application for Review of Negotiated Commercial Agreement is denied.

B. Pursuant to Section 252(e)(2)(A) of the Act, the Agreements are approved subject to the Commission's decision in Case No. 04-00209-UT as to whether Qwest is required to file the Master Services Agreement.

C. This Order shall not constitute approval of any version of Qwest's New Mexico SGAT that is not in compliance with the terms and conditions of the Commission's 271 Final Order. Any SGAT language incorporated in the Agreements is governed by and is subject to the Commission's 271 Final Order.

D. This Order shall not constitute an endorsement or approval with respect to any particular application, interpretation or effect of the FCC's decision and rules adopted in its Triennial Review Order ("TRO"). The TRO and USTA II involve many significant and complex telecommunications issues as well as unsettled questions of law that are not fully developed or otherwise appropriate for determination in this expedited case. The Commission approves the Agreements subject to any proceedings the Commission may convene to review these and related issues including but not limited to Case Nos. 03-00403-UT and 03-00404-UT. This approval is also subject to the outcome of the

appellate review of the TRO and any related further proceedings before the FCC. The Commission deems any approval in this case to have no precedential effect.

E. This Final Order shall not constitute approval of any provision or term of the Agreements that is in conflict with law, whether or not specifically addressed by this order, and any such provision or term is rejected and is not in the public interest.

F. This Order is effective immediately.

G. Copies of this Final Order shall be served on all persons listed on the attached Certificate of Service.

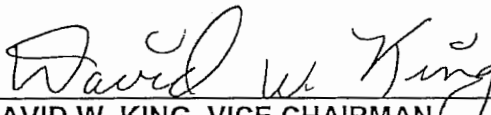
H. This docket remains open to consider, consistent with a decision in Case No. 04-00209-UT, whether the Master Services Agreement must be filed.

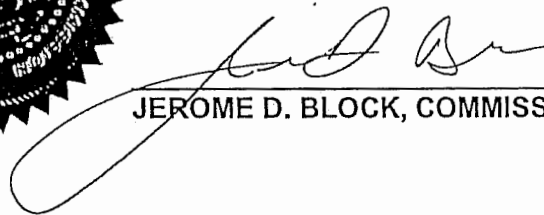
Issued under the Seal of the Commission at Santa Fe, New Mexico,
this 12th day of October, 2004.

NEW MEXICO PUBLIC REGULATION COMMISSION


HERB H. HUGHES, CHAIRMAN




DAVID W. KING, VICE CHAIRMAN


JEROME D. BLOCK, COMMISSIONER

EXCUSED

LYNDA M. LOVEJOY, COMMISSIONER


E. SHIRLEY BACA, COMMISSIONER



Qwest
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Melissa.Thompson@qwest.com

Melissa Thompson
Senior Attorney

October 20, 2004

RECEIVED
OCT 21 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pamela Bonrud, Executive Director
Public Utilities Commission of the State of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: Qwest Corporation's Reply to MCI's Supplement to Response to Qwest's Motion
to Dismiss
Docket No. TC 04-144

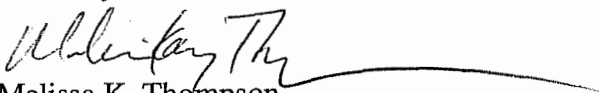
Dear Ms. Bonrud:

Please find enclosed for filing the original and ten copies of Qwest Corporation's Reply to MCI's Supplement to Response to Qwest's Motion to Dismiss. Please return a date-stamped copy of the Reply in the envelope provided.

Please contact me if you have any questions or concerns regarding this filing.

Thank you for your assistance.

Sincerely,


Melissa K. Thompson

Encl.

cc: Larry Toll (w/o encl.)
Colleen Sevold (w/ encl.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 21 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Filing
For Approval of a Master Services
Agreement between Qwest Corporation
and MCImetro Access Transmission
Services, LLC

TC 04-144
QWEST'S REPLY TO
MCI'S SUPPLEMENT TO
RESPONSE TO QWEST'S
MOTION TO DISMISS

Qwest Corporation ("Qwest") respectfully submits the following argument to reply to MCImetro Access Transmission Services, LLC's ("MCI") Supplement to Response to Qwest's Motion to Dismiss. In its Supplement, MCI submitted an Order from the Utah Public Service Commission dated September 30, 2004 that denied Qwest's Motion to Dismiss MCI's filing for approval of the QPP Master Services Agreement between MCI and Qwest.

I. THE UTAH PUBLIC SERVICE COMMISSION'S ORDER DENYING QWEST'S MOTION TO DISMISS AND REQUIRING QWEST TO FILE THE QPP AGREEMENT WITH THE COMMISSION MISINTERPRETS THE ACT AND THE FCC'S *DECLARATORY ORDER*.

In concluding that Qwest should be required to file the Qwest/MCI QPP Master Services Agreement ("QPP Agreement") with the Utah Commission for approval, the Utah Commission fundamentally misinterpreted the relevant provisions of the 1996 Telecommunications Act and the FCC's *Declaratory Order*¹, and incorrectly assumed that state commissions have authority to approve or reject terms and conditions of agreements that fall outside the list of services under sections 251(b) and (c).

¹ *In the Matter of Qwest Communications Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-98, 17 FCC Red 19337, 2002 FCC LEXIS 4929 (rel. Oct. 4, 2002) ("*Declaratory Order*").

A. The Utah Commission Has Misinterpreted The Filing Requirements of Section 252(e).

The Utah Commission based its Order in part on its interpretation of section 252(e)(1) and the language in that section providing that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." According to the Order, the reference to "any interconnection agreement" broadly encompasses agreements that do not involve ongoing obligations relating to sections 251(b) and (c).² However, this interpretation is directly contradicted by another subsection of 251(e) that the Utah Commission did not consider, and by the FCC's *Declaratory Order*. In addition, by focusing on the term "any" in section 252(e)(1), the Utah Commission reached a determination that fails to recognize that only "interconnection" agreements must be filed. It is essential to define the term "interconnection agreement" in determining which agreements must be filed and, specifically, to use the FCC's binding definition of that term -- an agreement involving ongoing obligations under sections 251(b) and (c). The Utah Commission's Order fails to give effect to this critical definitional ruling in the *Declaratory Order*.

While section 252(e)(1) requires an "interconnection agreement adopted by negotiation" to be filed with a state commission, section 252(e)(2) establishes that the negotiated interconnection agreements that must be filed for approval are those that were negotiated under section 252(a). Specifically, in delineating the grounds upon which a state commission may reject an interconnection agreement filed for approval, section 252(e)(2)(A) only authorizes review of "an agreement (or any portion thereof) *adopted by negotiation under subsection [252](a)*." (emphasis added). In turn, section 252(a)(1)

² Order at 3, 10.

refers to negotiations conducted pursuant to "a request for interconnection services, or network elements *pursuant to section 251 . . .*" (emphasis added). Thus, under this plain language of the Act, the only negotiated agreements that must be submitted to a state commission for approval are those that resulted from negotiations relating to a request for interconnection or network elements *pursuant to section 251*.

This literal reading of section 252(e) is entirely consistent with the FCC's *Declaratory Order* in which the FCC concluded that carriers are only required to file for approval with state commissions agreements containing ongoing obligations relating to section 251(b) or (c). The FCC's statement was clear and unequivocal: "[W]e find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).³ While the Utah Commission acknowledged this statement by the FCC, it ascribed a meaning to it that is contradicted by the FCC's express words.

According to the Utah Commission, what the FCC really meant to say is that carriers must file any agreement relating to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation *regardless whether the agreement involves an ongoing obligation relating to section 251(b) or (c)*. But that is not what the FCC said. Instead, the FCC established as an express condition to any filing obligation the requirement that an agreement involve an ongoing obligation relating to section 251(b) or (c). The Utah Commission simply read these words out of the *Declaratory Order*.

In doing so, the Utah Commission concluded that the FCC's reference to ongoing

³ *Declaratory Order* at ¶ 8 & n.26.

section 251(b) and (c) obligations – which appears in a footnote – does not mean what it says when read in the context of the body of the *Declaratory Order* where the footnote appears.⁴ However, in the paragraph in which the footnote appears, the FCC specifically addresses the ILECs' duty to negotiate in good faith under section 251(c)(1) "to implement their duties set forth in sections 251(b) and (c)." Indeed, this reference to the ILECs' section 251 duties appears immediately before the sentence in which the FCC lists the types of agreements that must be filed with state commissions, with the FCC prefacing the list by referring back to what is required by "these statutory provisions [251(b) and (c)]." The FCC's reference to "these statutory provisions" confirms that the agreements that must be filed with state commissions all must relate to an ILEC's ongoing section 251(b) and (c) obligations. Thus, contrary to the Utah Commission's conclusion, the body of the *Declaratory Order* confirms what the FCC said expressly in the footnote – that only agreements involving section 251(b) and (c) obligations need be filed.

The Utah Commission also concluded incorrectly that the *Declaratory Order* establishes as the "operative consideration [] whether the agreement's terms address or create an ongoing obligation dealing with interconnection, services or *network elements*."⁵ However, in listing the types of agreements to be filed with state commissions in the *Declaratory Order*, the FCC was careful to refer to agreements relating to "*unbundled network elements*," not "network elements."⁶ This distinction is

⁴ Order at 7-8.

⁵ Order at 7 (emphasis added).

⁶ *Declaratory Order* at ¶ 8 (emphasis added).

significant, since the FCC specifically uses the term "unbundled network elements" to describe elements that ILECs are required to unbundle under section 251 based upon findings of impairment.⁷ Thus, the FCC's reference to agreements involving "unbundled network elements" refers to agreements involving access to UNEs under section 251. Those agreements, unlike agreements relating to section 271 "network elements," must be filed with state commissions for approval.

Nor is there merit to the Utah Commission's conclusion that the network elements that comprise the QPP Agreement "fall within [section] 252's rubric of 'interconnection, services, or network elements.'"⁸ This conclusion assumes that the term "network elements" as it is used in section 252(a)(1) has the same meaning as the term "network element" set forth in section 153(29). However, the use of the term in section 252(a)(1) is expressly limited to network elements "pursuant to section 251," while there is no such limitation in section 153(29)'s definition of network elements. In other words, section 252(a)(1) refers specifically to network elements provided under section 251, while section 153(29), by its terms, refers more broadly to any network element "used in the provision of a telecommunications service."

Significantly, in its discussion of network elements in the *Declaratory Order*, the FCC did not invoke the definition in section 153(29) but, instead, as discussed above, referred specifically to "unbundled network elements." Because the network elements that comprise the QPP Agreement are not "unbundled network elements" provided

⁷ See, e.g., *TRO* at ¶ 662 (Distinguishing between network elements that must be "unbundled" under section 251 and network elements provided under section 271 that do not meet the section 251 "unbundling" standard).

⁸ Order at 6.

pursuant to section 251, they are not, contrary to the Utah Commission's conclusion, within the "rubric" of "section 252 network elements."

B. The Utah Commission Has Interpreted Section 252(a)(1) Incorrectly And In A Manner That Conflicts With The *Declaratory Order*.

The Utah Commission also based its order on the reference in section 252(a)(1) to the ability of an ILEC, upon receiving a request for "network elements pursuant to section 251," to "negotiate and enter into a binding agreement . . . without regard to the standards set forth in [section 251(b) and (c)]." According to the Utah Commission, the ability of an ILEC to enter into agreements that exceed the requirements of section 251(b) and (c), coupled with the obligation in section 252(a)(1) to file such agreements for approval, establishes that agreements containing obligations unrelated to section 251 must be filed for approval.⁹

This conclusion is effectively a determination that although the FCC has declared that only those negotiated agreements that concern section 251(b) or (c) obligations must be filed with and approved by state commissions, section 252(e) requires all negotiated interconnection agreements between an ILEC and a CLEC to be filed and approved by state commissions. However, the FCC specifically rejected that contention in the *Declaratory Order*.¹⁰ Moreover, the Utah Commission's reading of section 252(a)(1) improperly disregards the limiting effect of the opening clause of that section: "Upon receiving a request for interconnection, services, or network elements *pursuant to section 251*" (emphasis added). It is essential to read all of section 252(a)(1) by giving effect to this opening clause. Thus, in a negotiation *pursuant to section 251*, ILECs are

⁹ Order at 8-9.

¹⁰ *Declaratory Order* at ¶ 8 & n.26.

free to enter into interconnection agreements without regard to the standards of sections 251(b) and (c) and must file such agreements with state commissions. The starting point for this filing obligation, as the opening clause makes clear, must be a negotiation pursuant to section 251.

In this case, the QPP Agreement was not entered into pursuant to section 251 but, instead, pursuant to Qwest's offering of network elements under section 271. That Qwest offered these elements pursuant to section 271, not section 251, is confirmed by the fact that *USTA II* eliminated switching and transport as section 251 elements. Moreover, the pricing in the QPP Agreement is not based on the section 252(d) pricing standards that apply uniquely to unbundled network elements provided under section 251. The parties' agreement not to apply those standards further confirms that the QPP Agreement negotiations were not conducted pursuant to section 251.

The Utah Commission also interpreted section 252(a)(1) as if Congress added the following bold-faced and italicized phrase: “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 FCC approved list of network elements incumbent local exchange carriers are required to provide under section 251(b) and (c)* or the standards set forth in subsections (b) and (c) of section 251.” However, the standards pursuant to which ILECs must provide unbundled network elements pursuant to section 251(b) and (c) are clearly different from the unbundled network elements themselves. Had Congress meant to state that parties could negotiate terms and conditions without reference to the unbundled network elements an

ILEC is required to provide pursuant to section 251(b) and (c), it would have included that language in the statute. Congress did not, and the statute cannot reasonably be interpreted to include that language.

Importantly, the first sentence of section 252(a)(1) juxtaposes its opening clause -- "Upon a request for interconnection, services, or network elements **pursuant to section 251**" -- with the last clause of that sentence -- "without regard to the **standards** set forth in subsections (b) and (c) of section 251." The Utah Commission's interpretation suggests that the last clause addresses and trumps the first clause. A reading of the whole sentence shows that the first clause of that sentence addresses **services**, and the services at issue in section 252 are section 251 services. Further, the phrase "without regard to the standards of section 251(b) or (c)" should be interpreted according to the plain meaning of that language, which is that the ILEC and the CLEC may negotiate the provisioning of section 251 services and adopt a different degree or level of requirement than expressly required by sections 251(b) and (c). That is, an ILEC and a CLEC may negotiate different terms, rates or conditions than those mandated by section 251, but by no means does this language suggest that the agreements for services that must be filed under section 252 are limitless.

Finally, the Utah Commission's interpretation that the filing standard can be determined "without regard to whether the services at issue are section 251 services" cannot be reconciled with the *Declaratory Order* in which the FCC ruled that not all ILEC/CLEC agreements must be filed and that the section 252 filing requirement is defined by section 251 services.

C. The Utah Commission Failed To Address The Absence Of Any State Commission Approval Or Decision-Making Authority Under Section 271.

Because the QPP Agreement is comprised of network elements – switching and transport – that Qwest is providing under section 271, a determination that state commissions can review contracts like the QPP Agreement necessarily assumes that state commissions have authority under the Act to impose terms and conditions relating to section 271 network elements. However, Congress did not grant that authority and state commissions, therefore, are not permitted to impose any terms and conditions relating to section 271. The Utah Commission did not address this absence of authority, which is fatal to its conclusion that Qwest is required to submit the QPP Agreement for approval.

Under the Act, Congress and the FCC took over the regulation of local telephone service, leaving the states only with authority that Congress expressly granted. The Seventh Circuit recently described this regulatory regime:

In the Act, Congress entered what was primarily a state system of regulation of local telephone service and created a comprehensive federal scheme of telecommunications regulation administered by the Federal Communications Commission (FCC). While the state utility commissions were given a role in carrying out the Act, Congress "unquestionably" took "regulation of local telecommunications competition away from the State" on all "matters addressed by the 1996 Act;" it required that the participation of the state commissions in the new federal regime be guided by federal-agency regulations.¹¹

Under this regime, states are not permitted to regulate local telecommunications

¹¹ *Indiana Bell Telephone Co., Inc., v. Indiana Utility Regulatory Commission*, 359 F.3d 493, 494 (7th Cir. 2004) (quoting *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n. 6 (1999)).

competition "except by the express leave of Congress."¹² As described by the Third Circuit, "[b]ecause Congress validly terminated the states' role in regulating local telephone competition and, having done so, then permitted the states to resume a role in that process, the resumption of that role by a state is a congressionally bestowed gratuity."¹³ Thus, the court explained, a "state commission's authority to regulate comes from section 252(b) and (e), not from its own sovereign authority."¹⁴

Under this regime, therefore, a state commission has authority to regulate only when Congress has expressly granted that authority. A plain reading of the Act shows that Congress did not authorize any decision-making regulatory role for state commissions in the implementation and administration of section 271. Indeed, section 271(d)(3) expressly confers upon the FCC, not state commissions, the authority to determine whether BOCs have complied with the substantive provisions of section 271, including section 271's "checklist" provisions.¹⁵ State commissions have only a non-substantive, "consulting" role in that determination.¹⁶ As one court has explained, a state commission has a fundamentally different role in implementing Section 271 than it does in implementing Sections 251 and 252:

Sections 251 and 252 contemplate state commissions may take affirmative action towards the goals of those Sections, *while Section 271 does not contemplate substantive conduct on the part*

¹² *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 510 (3rd Cir. 2001) (internal citations omitted).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 U.S.C. 271(d)(3).

¹⁶ 47 U.S.C. 271(d)(2)(B).

of state commissions. Thus, a 'savings clause' is not necessary for Section 271 because the state commissions' role is investigatory and consulting, not substantive, in nature.¹⁷

Sections 201 and 202, which govern the rates, terms and conditions applicable to the unbundling requirements imposed by Section 271,¹⁸ likewise provide no role for state commissions. That authority has been conferred by Congress upon the FCC and federal courts.¹⁹ The FCC has thus confirmed that "[w]hether a particular [section 271] checklist element's rate satisfies the just and reasonable pricing standard is a fact specific inquiry that *the Commission* [*i.e.*, the FCC] will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6)."²⁰

Through its Order requiring Qwest to submit the QPP Agreement for approval, the Utah Commission is attempting to assert regulatory decision-making authority over section 271 network elements. Because Congress has conferred no such authority upon state commissions, the Utah Commission's action is unlawful.

¹⁷ *Indiana Bell Tel. Co. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 at 13 (S.D. Ind. 2003) (state commission not authorized by section 271 to impose binding obligations), *aff'd*, 359 F.3d 493 (7th Cir. 2004) (emphasis added).

¹⁸ *TRO* at ¶¶ 656, 662.

¹⁹ *See id.*; 47 U.S.C. 201(b) (authorizing the FCC to prescribe rules and regulations to carry out the Act's provisions); 205 (authorizing FCC investigation of rates for services, etc. required by the Act); 207 (authorizing FCC and federal courts to adjudicate complaints seeking damages for violations of the Act); 208(a) (authorizing FCC to adjudicate complaints alleging violations of the Act).

²⁰ *TRO* at ¶ 664.

D. The FCC's Determination That State Commissions Should Evaluate Agreements To Determine Whether They Must Be Submitted For Approval Does Not Expand The Authority Of State Commissions To Approve Or Reject Agreements.

The Utah Commission's Order accurately describes the FCC's determination in the *Declaratory Order* that where there is uncertainty concerning whether carriers should submit an agreement to a state commission for approval, the state commission should evaluate the agreement in the first instance to assess whether the filing requirement applies.²¹ However, that determination does not, as the Utah Commission's Order implies, expand the categories of agreements that must be submitted to state commissions for approval and does not permit states to apply their own standard for when agreements must be submitted for approval.

While states are permitted to conduct the initial evaluation of whether an agreement must be filed, they must apply the filing requirements of the Act, as implemented by the FCC, in making that evaluation. Specifically, a state commission must determine, in the words of the FCC, whether the agreement contains "an ongoing obligation relating to section 251(b) or (c)." If an agreement does not contain such obligations, a state commission is without authority to require carriers to submit it for approval.

The FCC's discussion of the states' reviewing role in the *Declaratory Order* confirms the limited nature of these initial evaluations by state commissions. The FCC explained that it had defined "the basic class of agreements that should be filed" – those involving an ongoing obligation relating to section 251(b) or (c) – and that states should apply that standard based on their statutory role and experience relating to

²¹ Order at 5; *Declaratory Order* at ¶ 10.

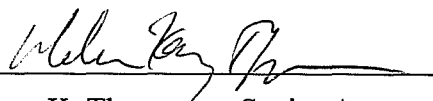
interconnection agreements.²² The FCC cited, for example, provisions relating to dispute resolution and escalation procedures involving "obligations set forth in sections 251(b) and (c)," which it concluded "are appropriately deemed interconnection agreements." Significantly, the FCC premised its conclusion that these provisions are interconnection agreements subject to filing requirements on the fact that they involve section 251(b) and (c) obligations. These examples provide clear instruction for states to follow in their initial evaluations of whether agreements should be filed – states must evaluate whether the agreements involve section 251(b) and (c) obligations. If an agreement does not involve such an obligation, there is no basis for a state commission to impose a filing requirement.

CONCLUSION

For the reasons set forth herein, Qwest respectfully moves that the Commission grant its Motion to Dismiss and dismiss the application for approval filed by MCImetro to the extent it seeks review and approval of the Qwest QPP Master Services Agreement.

RESPECTFULLY submitted this 20th day of October, 2004.

QWEST CORPORATION

By: 
Melissa K. Thompson, Senior Attorney
1801 California Street, 10th Floor
Denver, CO 80202
(303) 383-6643

²² *Declaratory Order* at ¶ 10.

Thomas J. Welk
BOYCE, GREENFIELD, PASHBY & WELK,
L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: (605) 336-2424


CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing **QWEST'S REPLY TO MCI'S SUPPLEMENT TO RESPONSE TO QWEST'S MOTION TO DISMISS** was mailed, U.S. Mail, postage prepaid, to the following on this 20th day of October, 2004:

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Thomas F. Dixon
MCImetro Access Transmission Services, LLC
707 17th Street, Suite 4200
Denver, CO 80202

Mary B. Tribby
Steven H. Weigler
AT&T Communications of the Midwest, Inc.
1875 Lawrence Street, Suite 1503
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October 25, 2005

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Pam Bonrud, Executive Secretary
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Pierre, South Dakota 57501

RECEIVED
OCT 25 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: MCI METRO ACCESS; IN THE MATTER OF THE FILING FOR
APPROVAL OF MASTER SERVICES AGREEMENT BETWEEN QWEST CORP.
AND MCIMETRO ACCESS TRANSMISSION SERVICES LLC
Docket: TC04-144
Our file: 0175

Dear Pam:

Enclosed are original and ten copies of a Supplement to
MCImetro's Response to Qwest's Motion to Dismiss in this docket.
Please file the enclosure.

With a copy of this letter, I am sending a copy of the motion to
the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service List

Tom Dixon

RECEIVED

OCT 25 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE FILING FOR) DOCKET NO. TC04-144
APPROVAL OF A MASTER SERVICES)
AGREEMENT BETWEEN QWEST) SUPPLEMENT TO MCIMETRO'S
CORPORATION AND MCIMETRO ACCESS) RESPONSE TO QWEST'S
TRANSMISSION SERVICES, LLC) MOTION TO DISMISS


MCImetro Access Transmission Services LLC ("MCImetro") files this supplement to its response to Qwest's motion to dismiss filed in this docket on August 23, 2004. Attached is an order of the Washington State Utilities and Transportation Commission approving negotiated interconnection agreement in its entirety over Qwest's objection. This order (1) grants the request of MCImetro Access Transportation Services for review and approval of the QPP negotiated between MCImetro Access Transmission Services, LLC, and Qwest Corporation; and (2) grants the request of MCImetro Access Transmission Services, LLC, for review and approval of the thirteenth amendment to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC, and Qwest Corporation.

Dated this 25th day of October, 2004.

MCIMETRO'S ACCESS TRANSMISSION SERVICES, LLC

Thomas F. Dixon, #500
707 17th Street, #4200
Denver, Colorado 80202
303-390-6206 (ph) 303-390-6333 (fx)

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAVID A. GERDES
Attorneys for MCImetro Access
Transmission Services

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 25th day of October, 2004, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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SD Public Utilities Commission
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Pierre, SD 57501


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David A. Gerdes

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request of)	
	)	DOCKET NO. UT-960310
MCIMETRO ACCESS)	
TRANSMISSION SERVICES, LLC	)	DOCKET NO. UT-043084
)	
and	)	ORDER NO. 01
)	
QWEST CORPORATION)	
)	
For Approval of Negotiated	)	ORDER APPROVING
Interconnection Agreement, in its	)	NEGOTIATED
Entirety, Under the	)	INTERCONNECTION
Telecommunications Act of 1996	)	AGREEMENT IN ITS ENTIRETY
.....)	

1 *Synopsis: The Commission grants the request of MCImetro for approval of the Thirteenth Amendment to the negotiated interconnection agreement between MCImetro and Qwest, including a portion denominated "Master Service Agreement for the Provision of Qwest Platform Plus." The QPP and Thirteenth Amendment are parts of an integrated agreement. The agreement does not discriminate against any carrier not a party to the agreement, is consistent with state and federal law, and is consistent with the public interest, convenience, and necessity.*

I. INTRODUCTION

2 This Order concerns approval of a negotiated interconnection agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC, after Qwest objected to Commission review of a part of the agreement and asserted the Commission lacks jurisdiction to require filing and review of that part of the agreement.

3 The Commission took up this matter at a regularly scheduled Open Meeting held on October 13, 2004, after due and proper notice. The Commission has jurisdiction over the matter pursuant to RCW 80.01.040, Chapter 80.04 RCW, and RCW 80.36.610(1). This decision is permitted and contemplated for a state commission by Section 252(e) of the federal Telecommunications Act of 1996 (Act). 47 U.S.C. § 252(e). The Commission's administrative rules for review and approval of all interconnection agreements under the Act are set forth in WAC 480-04-640.

4 The Commission approved an interconnection agreement between the parties on August 18, 1997, a first amended agreement on December 29, 1999, a second amended agreement on March 28, 2001, a third amended agreement on October 31, 2001, a fourth amended agreement on November 28, 2001, a fifth amended agreement on October 30, 2002, a sixth amended agreement on November 15, 2002, a seventh amended agreement on December 31, 2002, an eighth amended agreement on March 26, 2003, a ninth amended agreement on April 30, 2003, a tenth amended agreement on September 10, 2003, an eleventh amended agreement on March 24, 2004, and a twelfth amended agreement on June 30, 2004. The Commission ordered that in the event the parties amended their agreement, the amended agreement would be deemed a new agreement under the Telecom Act and must be submitted to the Commission for approval.

II. QUESTIONS PRESENTED

5 MCImetro Access Transmission Services, LLC, (MCI) has requested the Commission approve under Section 252(e) the *Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts* (hereafter *Thirteenth Amendment*)¹ and also approve the Qwest Platform

¹ The *Thirteenth Amendment* adds terms and conditions for a batch hot cut process, and stipulates that Qwest will not offer, and MCI will not order, unbundled mass market switching, unbundled enterprise switching or unbundled shared transport as part of the unbundled network element

Plus Master Service Agreement (QPP)² between MCI and Qwest as a part of an interconnection agreement between the two companies.

6 Qwest requests approval of the *Thirteenth Amendment*, but opposes approval of the QPP on the basis that the QPP is not a negotiated interconnection agreement but a “commercial agreement” beyond the jurisdiction of the Commission. Qwest also contends the Commission is preempted from reviewing the QPP.

7 The questions before the Commission are: (1) whether the QPP is part of a negotiated interconnection agreement, and (2) whether the negotiated interconnection agreement is nondiscriminatory, consistent with state and federal law, and consistent with the public interest, convenience, and necessity.

III. POSITIONS OF PARTIES

A. Qwest

8 Qwest asserts that the QPP contains terms for providing switching and shared transport elements that Qwest is no longer required to provide pursuant to Section 251 (as a result of the *USTA II* decision³), but that Qwest is nonetheless required to provide under Section 271(c)(2)(B). Qwest argues that it is therefore not required to file such an agreement with a state commission and the state commission lacks authority under Section 252 to review and approve the

platform out of the existing interconnection agreement or other agreement governed by 47 U.S.C. §§ 251 and 252, and addresses the availability of line splitting.

² The QPP is composed of the “Master Services Agreement,” the “Service Exhibit 1 – Qwest Platform Plus™ Service,” and the “QPP Rate Page – Washington.”

The QPP offers local switching and shared transport for residential and business service, as well as Centrex, payphone access lines, and to serve PBXs. *QPP* ¶ 1.1. Local switching and shared transport are network elements. The QPP is a six-page description of how network elements and associated services will be provided. The “QPP Rate Page – Washington” contains in excess of one hundred separate rates for itemized elements and services.

³ *United States Telecom Ass’n v. Federal Communications Comm’n*, 359 F.3d 554 (D.C. Cir. 2004).

agreement. *Id. at* ¶ 11. It bases its argument, *Id. at* ¶¶ 12-14, on a footnote to the *Qwest Declaratory Order*,⁴ in which the FCC stated (in footnote 26):

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

9 Qwest also argues that agreements that make switching and shared transport available are subject to exclusive federal jurisdiction. *Id. at* ¶ 15-20.

B. AT&T

10 AT&T refutes Qwest's argument that only agreements adopted under Sections 251(b) and (c) of the Act need be filed for Commission approval. AT&T states that the QPP is an "interconnection agreement adopted by negotiation" subject to the filing requirement under Section 252(e)(1) and that Section 252(e)(1) is clear on its face and requires "any" interconnection agreement to be filed. *AT&T Response*, at 3. Further, AT&T states the QPP and the *Thirteenth Amendment* constitute an agreement that creates an "ongoing obligation" and is therefore the type of agreement the FCC requires to be submitted to a state commission. *Id. at* 3-6.

⁴ *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (October 4, 2002).

- 11 AT&T states its concern that if Qwest is not required to file the QPP, then the QPP and similar negotiated agreements will not be examined to determine if they are discriminatory. AT&T takes issue with Qwest's contention that the agreement was not entered into "pursuant to Section 251." AT&T notes that all carriers have a duty to interconnect under Section 251(a)(1) and therefore the QPP is entered into in fulfillment of that Section 251 duty; if Qwest had balked at providing the network elements, MCI could have invoked its right to arbitrate under Section 252. AT&T states that even if that were not true, the QPP is still a negotiated agreement with the meaning of Section 252(a)(1) even if it was negotiated "without regard to the standards in [§ 251(b) and (c).]" *Id. at 8-9.*
- 12 AT&T also rebuts Qwest's assertion that because Qwest is providing the elements in the QPP pursuant to Section 271(c)(2)(B) and not Section 251(c) it is not required to file the QPP. AT&T points out that under Section 271, Qwest's authority to provide in-region long distance service in Washington is conditioned on Qwest offering competitive checklist items pursuant to "binding agreements that have been approved under section 252" *Id. at 10-11.* AT&T cites language from a Section 271 application case in which the FCC stated that a Bell Operating Company is only "providing" a checklist item if it has a "concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Id. at 12.*
- 13 Finally, AT&T points out that other state commissions, namely Texas, Michigan, Ohio, and Kansas have found that such agreements must be filed with state commissions. *Id. at 13-14.*

C. MCI

- 14 MCI also rebuts Qwest's arguments in opposition to its request for approval. MCI states that the FCC historically has taken a broad view of the Section

252(a)(1) filing requirement and recently has provided, in the *Qwest Declaratory Order*,⁵ a broad definition of what constitutes an interconnection agreement that must be filed pursuant to Section 252(a)(1). *MCI Response at ¶¶ 7-8*. MCI also cites a recent FCC order issued in August of 2004, and a concurring statement by FCC Commissioner Abernathy, for the proposition that the FCC has not settled the issue of whether commercially negotiated agreements for access to network elements that are not required to be unbundled under Section 251(c)(3) should fall within Section 252. *Id. at ¶¶ 9-11*. MCI states that the FCC has left the first determination of what is an interconnection agreement to the states, and in any case, did not address the more general Section 252(e) filing requirement (as opposed to the Section 252(a)(1) filing requirement) in the declaratory ruling on which Qwest relies for its theory. *Id. at ¶¶ 14-15*.

15 MCI points out that the Commission's rule, WAC 480-07-640, requires all agreements that are required to be filed under Section 252 to be filed with and approved by the Commission, including all attachments and appendices. *Id. ¶¶ 16-17*. MCI states that, at a minimum, the QPP is an attachment to the documents that even Qwest agrees constitute an amendment to an interconnection agreement that must be filed with and approved by the Commission. *Id. at ¶ 17*. MCI indicates that if approved, the agreement would be available to other carriers as provided for in Section 252(i). *MCImetro Request, at 7*.

D. Commission Staff

16 Commission Staff states the QPP is subject to the Section 252 filing requirement because it offers network elements and services that are contemplated by Section

⁵ *In the Matter of Qwest Communications International Inc.'s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (October 4, 2002).

252 of the Act. *Open Meeting Memo*, at 5. Commission Staff asserts the FCC has never suggested that agreements resulting from commercial negotiations should be regarded as anything other than interconnection agreements. Commission Staff asserts the FCC has stated in several decisions that state commissions are in the best position to determine which agreements must be filed. *Id.* at 5-6.

Commission Staff also asserts approval of the QPP, which would permit other carriers to adopt it as an agreement, would provide more certainty to carriers than is provided by Qwest's posting the QPP on Qwest's wholesale website. *Id.* at 6. Commission Staff asserts there is no exception to Section 252(e) filing requirements for negotiated interconnection agreements offering network elements not required to be offered under Section 251(d), or those offered to fulfill Section 271 obligations. *Id.* Commission Staff also contends that filing the QPP is necessary for MCI and Qwest to meet the "completeness" requirement of the Commission's interconnection agreement filing rule, WAC 480-07-640.

- 17 Commission Staff states it has reviewed the QPP and the *Thirteenth Amendment* and determined that they do not discriminate against carriers that are not parties to the agreement, that the QPP and *Thirteenth Amendment* are consistent with state and federal law, and that the QPP and *Thirteenth Amendment* are consistent with the public interest, convenience, and necessity.

IV. COMMISSION DISCUSSION AND DECISION

- 18 The federal Telecommunications Act of 1996 (the Act) states "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." 47 U.S.C. § 252(e)(1). RCW 80.36.610(1) grants the Commission authority "to take actions, conduct proceedings, and enter orders as permitted or contemplated . . . under the federal telecommunications act of 1996."

19 Congress provided state commissions the authority to reject a negotiated interconnection agreement that discriminates against carriers not a party to the agreement, and to reject a negotiated interconnection agreement that is not consistent with the public interest, convenience, and necessity. 47 U.S.C. § 252(e)(2)(A).

20 In its *Qwest Declaratory Order*,⁶ the FCC stated:

Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an “interconnection agreement” and, if so, whether it should be approved or rejected.

21 It is unnecessary for us to decide whether Section 252(a)(1) and (e) would apply to an agreement that pertained solely to the provision of a network element that was not required to be unbundled pursuant to FCC rules implementing sections 251(c), because we conclude that the *Thirteenth Amendment* and the QPP are part of one integrated agreement pertaining to matters that indisputably are subject to the Section 252 filing and approval requirements for negotiated interconnection agreements.

22 Qwest concedes that the *Thirteenth Amendment* is a fully negotiated interconnection agreement. *MCImetro Request for Approval, at 1; Qwest Request for Approval, at 1.*⁷

⁶ *In the Matter of Qwest Communications International Inc.’s Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337, ¶ 10 (October 4, 2002).

⁷ Qwest submitted its August 4, 2004, request on a form approved by the Commission. The form states the request is for approval of a “fully negotiated amendment to an interconnection agreement.”

- 23 Both the *Thirteenth Amendment* and the QPP state that Qwest and MCI contemporaneously entered into the QPP and the *Thirteenth Amendment* to provide MCI with “services technically and functionally equivalent” to the unbundled network element platform (UNE-P) arrangements as they existed under the companies’ interconnection agreements on June 14, 2004 (just prior to the expiration of the *USTA II* court’s stay of its vacatur of the FCC’s unbundling rules for switching and dedicated transport). *Qwest Master Services Agreement, at 2 (recitals); Amendment to Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, at 1 (recitals)*.
- 24 As explained by the *Thirteenth Amendment* and the QPP themselves, the combination of network elements commonly known as UNE-P includes not only the port, switching and transport elements, but also the local loop, *Id.*, which incumbent local exchange carriers are still required to provide on an unbundled basis pursuant to FCC rules that implement Section 251(c). *See 47 C.F.R. § 51.319(a)(1)*. There is no dispute that ongoing obligations pertaining to an ILEC’s provision of the local loop element are subject to state commission review and approval under Section 252(e).
- 25 The whole purpose of the QPP is to provide the port, switching, and shared transport elements *in combination with* the local loop element, which is provided under Qwest’s existing interconnection agreement with MCI. According to the Service Exhibit 1 to the Qwest Master Services Agreement, Qwest:

QPP™ services shall consist of the Local Switching Network Element (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest Switch) and the Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P under the applicable

interconnection agreement or SGAT where MCI has opted into an SGAT as its interconnection agreement (collectively, "ICAs") as the same existed on June 14, 2004.

* * *

As part of the QPP™ service, Qwest shall combine the Network Elements that make up the QPP™ service with Analog/Digital Capable Loops, with such Loops (including services such as line splitting) being provided pursuant to the rates, terms and conditions of the MCI's ICAs as described below.

* * *

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

Service Exhibit 1-Qwest Platform Plus Service, Sec. 1.1, 1.2.

- 26 There can be no serious question that the ongoing obligations concerning rates, terms and conditions for the provision of network elements in the *Thirteenth Amendment* and the QPP are part of a single integrated, non-severable agreement. The Qwest Master Services Agreement at Section 23 provides that:

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

27 The Joint Request also reflects integrated pricing in combination of the two agreements, which have to be considered together in order for one to understand the entire agreement between the two parties. This integrated pricing also makes it apparent that the bargain struck by the parties encompasses both the QPP and the *Thirteenth Amendment*.

28 In addition to addressing line splitting, and striking certain network elements from the existing interconnection agreement, the *Thirteenth Amendment* provides for a batch hot cut process. An important function of a batch hot cut process is to enable migration of CLEC customers from service provided over UNE-P to service that is provided over the CLEC's own switch but still using the ILEC's loop. Under the QPP, the recurring charge for the port element is to increase each year—but only if Qwest meets its obligations related to implementation of a batch hot cut process under the *Thirteenth Amendment*. The QPP states:

Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to MCI's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™ Port Rate Increases for that state will not go into effect until such time as Qwest is able to process Batch Hot Cut orders in that state, and in the event of any such delay in the effective date of the QPP™ Port Rate increases, there shall be no subsequent true up of the QPP™ Port Rate Increases.

29 Thus, the *Thirteenth Amendment* and the QPP represent an integrated combination of rates, terms and conditions for the provision of a combination of unbundled network elements, which must be taken together in order for one to understand the entirety of the interconnection agreement between the two

parties. In order to determine whether the *Thirteenth Amendment* discriminates against other parties and whether it is in the public interest, it is critical to have the entirety of the agreement before us. Only then can we understand how Qwest treats its wholesale customers for local interconnection. Also, because the *Thirteenth Amendment* and the QPP must be read together to understand the entirety of the amended interconnection agreement, it is clear that the QPP is an interconnection agreement subject to the filing, approval, and adoption requirements under Section 252 of the Act.

30 One provision of the QPP in particular demonstrates the danger to the Act's anti-discrimination policy if we were to accept Qwest's theory that filing and approval requirements apply only to select portions of interconnection agreements that pertain to Section 251(c) network elements. Although the QPP provides that the loop element will be provided pursuant to MCI's interconnection agreements with Qwest at the rates set forth in those agreements,

[t]o the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state . . . remains constant.

Service Exhibit 1-Qwest Platform Plus Service, Sec. 3.2.

31 Thus, the terms of the agreement ensure that, as between these two parties, a change in the loop rate or in the pricing zone designations by this Commission will be offset by a commensurate increase or decrease in the charges that will apply under the purportedly separate QPP agreement. By this device (and there are undoubtedly countless mechanisms that an ILEC and a favored CLEC might

potentially employ to similar ends⁸) the parties have bargained a different price for a Section 251 element than would apply to another CLEC that is not a party to the QPP and which lacks the right to opt-in to the integrated *Thirteenth Amendment* and QPP under Section 251(i).

32 As the court held in *Sage v. P.U.C. of Texas*,⁹ “If the parties were permitted to file for approval on only those portions of the integrated agreement that they deem relevant to § 251 obligations, the disclosed terms of the filed sub-agreements might fundamentally misrepresent the negotiated understanding of what the parties agreed.” That is the case with the *Thirteenth Amendment*. Accordingly, we find that the QPP is part of the negotiated interconnection agreement between MCI and Qwest. Because the QPP is part of the negotiated interconnection agreement, it is subject to our jurisdiction and to our review. 47 U.S.C. 252(e).

⁸ As the court stated in *Sage Telecom, LP v. Public Util. Comm’n of Texas*, Case No. A-04-CA-364-SS, at 11-12 (W.D. Tex. Oct. 7, 2004), in rejecting a similar argument by Southwestern Bell:

For instance, during the give-and-take process of a negotiation for an integrated agreement, an ILEC might offer § 251 unbundled network elements at a higher or lower price depending on the price it obtained for providing non-§ 251 services. Similarly, the parties might agree that either of them would make a balloon payment which, although not tied to the provision of any particular service or element in the comprehensive agreement, would necessarily impact the real price allocable to any one of the elements or services under contract.

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

⁹ *Id.* at 11.

A. Approval of Negotiated Interconnection Agreement

1. Procedure

33 Our procedure for review and approval of negotiated interconnection
agreements is that we will consider a request at a regularly or specially
scheduled open public meeting. *WAC 480-07-640(2)(b)*. We may hear oral
argument from parties, from members of the public, or both. *Id.* The
Commission will enter an order approving or rejecting a fully negotiated
agreement within ninety days after the date on which the request for approval
and interconnection agreement are filed. *Id.* This procedure is authorized by the
Act. *47 U.S.C. § 252(e)(3) and (4)*.

2. Standard of Approval

34 The standard of approval is that we must approve a request unless the
agreement or a portion of it discriminates against a telecommunications carrier
not a party to the agreement, or unless the agreement or a portion of it is not
consistent with the public interest, convenience, and necessity. *47 U.S.C. §*
252(e)(2). The Commission has added, consistent with the Act, a requirement
that agreements be consistent with state and federal law. *WAC 480-07-*
640(2)(a)(i); 47 U.S.C. § 252(e)(3).

**3. MCI Filed a Complete Agreement that Is Not Discriminatory, Is
Consistent with State and Federal Law, and Is Consistent with the
Public Interest, Convenience, and Necessity.**

35 MCI and Qwest each assert the *Thirteenth Amendment* is not discriminatory and is
consistent with the public interest. MCI asserts the same for the QPP. *Open*
Meeting Memo, at 5-6. Commission Staff states it has reviewed the *Thirteenth*
Amendment and the three QPP documents and determined they do not contain

terms, conditions, or prices that discriminate against any other carrier; determined they are consistent with state and federal law; and also determined they are consistent with the public interest, convenience, and necessity. *Id. at 6.* On the record before us, we conclude the negotiated interconnection agreement (the *Thirteenth Amendment* together with the QPP) must be approved consistent with 47 U.S.C. § 252(e) and WAC 480-07-640. Accordingly, we grant the request of MCI and approve the negotiated interconnection agreement filed by MCI on July 29, 2004, in Docket No. UT-960310. Other carriers may adopt the negotiated interconnection agreement. 47 U.S.C. § 252(i).

V. FINDINGS OF FACT

- 36 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact.
- 37 (1) The QPP is composed of the "Master Services Agreement," the "Service Exhibit 1 – Qwest Platform Plus™ Service," and the "QPP Rate Page – Washington."
- 38 (2) MCImetro Access Transmission Services, LLC requested approval of the *Thirteenth Amendment* to the negotiated interconnection agreement between MCImetro Access Transmission Services, LLC and Qwest Corporation, and requested approval of the QPP on July 29, 2004.
- 39 (3) Qwest Corporation objected to MCImetro Access Transmission Services, LLC's request for approval of the QPP and asserted the Commission lacks jurisdiction to review the QPP on August 4, 2004.
- 40 (4) The *Thirteenth Amendment* and the QPP together constitute a negotiated interconnection agreement.

- 41 (5) The *Thirteenth Amendment* and the QPP do not discriminate against any carrier not a party to the agreement.
- 42 (6) The *Thirteenth Amendment* and the QPP are consistent with state and federal law.
- 43 (7) The *Thirteenth Amendment* and the QPP are consistent with the public interest, convenience, and necessity.

VI. CONCLUSIONS OF LAW

- 44 (1) The Commission has jurisdiction over the subject matter of the request of MCImetro Access Transmission Services, LLC and negotiated interconnection agreements.
- 45 (2) The Commission is not required by the Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to approving a negotiated interconnection agreement in its entirety.
- 46 (3) Commission approval of the QPP is permitted and contemplated for a state commission by Section 252 of the federal Telecommunications Act of 1996.
- 47 (4) A complete agreement is filed with the Commission when all documents containing terms, conditions, and rates (prices) that apply to provision of any network element, service, or other item or activity related to interconnection are filed.

- 48 (5) Commission approval of the *Thirteenth Amendment* and the QPP will not
result in discrimination against any telecommunications carrier that is not
a party to the agreement.
- 49 (6) Commission approval of the *Thirteenth Amendment* and the QPP is
consistent with state and federal law.
- 50 (7) Commission approval of the *Thirteenth Amendment* and the QPP is
consistent with the public interest, convenience, and necessity.

VII. ORDER

51 This order decides issues in a non-adjudicative proceeding. Based on the
foregoing, the Commission orders:

- 52 (1) The Commission grants the request of MCImetro Access Transmission
Services, LLC for review and approval of the QPP negotiated between
MCImetro Access Transmission Services, LLC and Qwest Corporation.
- 53 (2) The Commission grants the request of MCImetro Access Transmission
Services, LLC for review and approval of the *Thirteenth Amendment* to the
negotiated interconnection agreement between MCImetro Access
Transmission Services, LLC and Qwest Corporation.
- 54 (3) In the event that the parties revise, modify, or amend the agreement
approved in this Order, the revised, modified, or amended agreement will
be deemed to be a new agreement under the Act and must be submitted to
the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and
relevant provisions of state law, prior to taking effect.

- 55 (4) The laws and regulations of the State of Washington and Commission Orders govern the construction and interpretation of the *Thirteenth Amendment* to the Agreement, including the QPP, between MCImetro Access Transmission Services, LLC and Qwest Corporation. The *Thirteenth Amendment*, including the QPP, is subject to the jurisdiction of the Commission.

DATED at Olympia, Washington, and effective this 20th day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING FOR)	ORDER DENYING MOTION
APPROVAL OF A MASTER SERVICES)	TO DISMISS; ORDER
AGREEMENT BETWEEN QWEST)	APPROVING AGREEMENT
CORPORATION AND MCIMETRO ACCESS)	
TRANSMISSION SERVICES, LLC)	TC04-144

On August 2, 2004, the Commission received a filing from MCImetro Access Transmission Services, LLC (MCI) for approval of an Amendment to an Interconnection Agreement for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts (ICA Amendment) and Qwest Master Services Agreement (MSA) (together, Agreements) between MCI and Qwest Corporation (Qwest).

On August 5, 2004, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until August 23, 2004, to do so. On August 17, 2004, the Commission received a Motion to Dismiss Filing for Approval of Negotiated Commercial Agreement from Qwest. On August 23, 2004, the Commission received Comments from AT&T Communications of the Midwest, Inc. (AT&T) and a Response to Qwest Motion to Dismiss from MCI. On October 6, 2004, the Commission received a Supplement to Response to Qwest's Motion to Dismiss from MCI. On October 8, 2004, the Commission received Qwest's Joint Reply to MCI's Response to Qwest Motion to Dismiss and to AT&T's Comments. On October 21, 2004, the Commission received a second Supplement to MCI's Response to Qwest's Motion to Dismiss and Qwest's Reply to MCI's Supplement to Response to Qwest's Motion to Dismiss. On October 25, 2004, the Commission received a third Supplement to MCI's response to Qwest's Motion to Dismiss.

At its duly noticed October 26, 2004, meeting, the Commission considered this matter. Commission Staff recommended denial of Qwest's Motion to Dismiss and approval of the MSA. The Commission unanimously voted to deny the motion to dismiss and to approve the MSA.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, particularly 49-31-81, ARSD 20:10:32:21 through 20:10:32:23 and 47 U.S.C. § 252.

Having considered the filings of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

1. MCI filed the Agreements with the Commission on August 2, 2004, in accordance with 47 U.S.C. § 252 and ARSD 20:10:32:21 implementing SDCL 49-31-81. On August 17, 2004, Qwest filed a Motion to Dismiss Filing for Approval of Negotiated Commercial Agreement. In its motion, Qwest argues that the MSA is not required to be filed and approved under 47 U.S.C. § 252 and ARSD 20:10:32:21. On October 26, 2004, at its regular meeting, the Commission held a motion hearing on Qwest's Motion to Dismiss and considered MCI's request for approval of the Agreements.

2. On July 26, 2004, Qwest filed the ICA Amendment. On September 22, 2004 in Docket No. TC04-135, the Commission approved the ICA Amendment. Qwest filed the MSA for "informational purposes only." The Commission did not approve the MSA following such filing but rather issued a Request for Comments from interested persons in its Weekly Filings Notice for the period July 22- July 28, 2004.

3. The Commission finds that it can consider the Agreements as filed according to their terms without reference to extrinsic facts and that it can rule on the Motion to Dismiss without an evidentiary hearing.

4. The current standard for determining whether an agreement between carriers is an "interconnection agreement," the filing and approval of which is required by 47 U.S.C. § 252, was laid down by the FCC in *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum and Order, 17 F.C.C.R. 19337 (Rel. Oct. 4, 2002), ¶ 8:

. . . [W]e find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1). This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act.

5. As found by the Washington Commission in *In the Matter of MCI Metro Access Transmission Services, LLC and Qwest Corporation for Approval of Negotiated Interconnection Agreement, in its Entirety, Under the Telecommunications Act of 1996*, Order Approving Negotiated Interconnection Agreement in its Entirety, Dockets Nos. UT-960310 and UT-043084 (Oct. 20, 2004) (*Washington Order*), several provisions of the Agreements indicate that they are intended to function as an integrated contractual arrangement. These integrating provisions include, but are not limited to: (i) MSA, Section 23, which provides in pertinent part:

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

(ii) ICA Amendment, Section 2.2, which provides in pertinent part:

If the QPP MSA is terminated (for reasons other than material breach by MCI) with respect to a particular state, this Amendment shall, by its own terms and notwithstanding any requirement that subsequent modifications or amendments be in writing signed by both Parties, automatically be terminated in the state, and MCI shall be free thereafter to pursue any available means to purchase UNE-P or equivalent services from Qwest.

(iii) ICA Amendment, Section 2.6:

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

(iv) ICA Amendment, Section 4.1, which provides in pertinent part:

The agreement not to order UNE-P services embodied in this Section shall remain in effect for the Term of this Amendment, and for the avoidance of doubt, shall no longer be binding on MCI or otherwise enforceable in a particular state if the QPP MSA is terminated as to that state (other than for reason of a material breach by MCI).

(v) MSA, Service Exhibit 1- QWEST PLATFORM PLUS™ SERVICE, Section 3.2, which provides *inter alia*:

To the extent that the monthly recurring rate for the loop element in a particular state is modified on or after the Effective Date, the QPP™ port rate for that state in the Rate Sheet will be adjusted (either up or down) so that the total rate applicable to the QPP™ service and loop combination in that state (after giving effect to the QPP™ Port Rate Increases as adjusted for any applicable discount pursuant to Section 3.3 of this Service Exhibit) remains constant.

(vi) MSA, Service Exhibit 1- QWEST PLATFORM PLUS™ SERVICE, Section 3.3, which provides *inter alia*:

Provided that Qwest has implemented the Batch Hot Cut Process in a particular state pursuant to the terms and conditions of the Amendment to MCI's ICAs entered into contemporaneously with this Agreement, the monthly recurring rates for the switch port in the attached Rate Sheets shall increase incrementally by the amount of the applicable QPP™

6. As the Washington Commission found, the Commission finds that the Agreements "reflect integrated pricing in combination of the two agreements, which have to be considered together in order for one to understand the entire agreement between the two parties. This integrated pricing also makes it apparent that the bargain struck by the parties encompasses both the QPP and the" [ICA Amendment].

7. All of the state Commissions that have considered the ICA Amendment and MSA arrangement within Qwest's territory to date have denied Qwest's motions to dismiss, and Utah and Washington have determined that both the ICA Amendment and MSA are required to be filed pursuant to 47 U.S.C. § 252 and enabling state laws and regulations (the New Mexico Commission deferred decision on the issue of whether filing was required because of a pending consolidated proceeding on the issue to be concluded beyond the 90-day time limit of § 252). See *Washington Order, In the Matter of the Interconnection Agreement Between Qwest Corporation and MCI Metro Access Transmission Services, LLC for Approval of an Amendment for Elimination of UNE-P and Implementation of Batch Hot Cut Process and QPP Master Service Agreement*, Docket No. 04-2245-01, Order Denying Motion to Dismiss (Utah PSC, Sep. 30, 2004); *In the Matter of the Amendment to the Interconnection Agreement Between MCI and Qwest Dated July 16, 2004, and the Master Services Agreement Between MCI and Qwest Dated July 16, 2004*, Case No. 04-00245-UT (N.M. PRC, Oct. 12, 2004). See also, *Sage Telecom, LP v. Public Utility Commission of Texas*, Case No. A-04-CA-364-SS (W.D. Tex., Oct. 7, 2004); *In the Matter of the Request for Commission Approval of an Interconnection Agreement Between SBC Michigan and Sage Telecom, Inc.*, Case No. U-13513 (Mich. PSC, Aug. 3, 2004); *In the Matter, on the Commission's Own Motion, to Require SBC Michigan and Sage Telecom, Inc. to Submit Their Interconnection Agreement for Review and Approval*, Case No. U-14121 (Mich. PSC, April 28, 2004).

8. The Commission accordingly finds that the ICA Amendment and the MSA are sufficiently linked both functionally and legally to be treated as an integrated agreement for purposes of determining whether the MSA is required to be filed and approved pursuant to 47 U.S.C. § 252 and ARSD 20:10:32:21. Since the ICA Amendment is indisputably an interconnection agreement pursuant to 47 U.S.C. § 252 and ARSD 20:10:32:21, the Commission finds that the MSA is also part of an integrated interconnection agreement that is required to be filed and approved.

9. An additional factor militating in favor of finding that the MSA should be required to be filed is the recognized uncertainty involving unbundling requirements and the scope of the filing obligation. The Agreements themselves state as a central assumption of their purpose that "both MCI and Qwest acknowledge certain regulatory uncertainty in light of the DC Circuit Court's decision in *United States Telecom Association v. FCC*, 359 F.3d 554 (March 2, 2004), with respect to the future existence, scope, and nature of Qwest's obligation to provide such UNE-P arrangements under the Communications Act" The relationship between this uncertainty and the filing obligation under 47 U.S.C. § 252 is brought into sharper focus by the FCC's explicit acknowledgement of the issue recently in *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (Rel. Aug. 20, 2004). The FCC stated in ¶13:

Additionally, we incorporate three petitions regarding incumbent LEC obligations to file commercial agreements, under section 252 of the Act, governing access to network elements for which there is no section 251(c)(3) unbundling obligation. To that end, should we properly treat commercially negotiated agreements for access to network elements that are not required to be unbundled pursuant to section 251(c)(3) under section 252, section 211, or other provisions of law?

Given the consequences that have attended filing omissions in previous cases, the Commission finds that it is prudent to err on the side of requiring filing until more definitive guidance is forthcoming regarding the precise boundaries of the filing requirement. See *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, NAL Acct. No. 200432080022, FRM No. 0001-6056-25, Notice of Apparent Liability for Forfeiture, FCC 04-57 (Rel. March 12, 2004).

10. The Commission does not reach the issue of whether an agreement dealing with network elements that are not required to be unbundled pursuant to 47 U.S.C. §251(c) is required to be filed pursuant to 47 U.S.C. 252 and ARSD 20:10:32:21 in the absence of material linkage between such agreement and an interconnection agreement dealing with network elements that are required to be unbundled pursuant to 47 U.S.C. §251(c).

11. The Agreements taken as a whole do not discriminate against a telecommunications carrier that is not a party thereto and are consistent with the public interest, convenience, and necessity.

CONCLUSIONS OF LAW

1. The Commission concludes that it can consider the Agreements as filed according to their terms without reference to extrinsic facts and that it can rule on the Motion to Dismiss without an evidentiary hearing.

2. The ICA Amendment was previously approved in Docket No. TC04-135.

3. The ICA Amendment and the MSA are sufficiently linked both functionally and legally to be treated as an integrated agreement for purposes of determining whether the MSA is required to be filed and approved pursuant to 47 U.S.C. § 252 and ARSD 20:10:32:21. Since the ICA Amendment is indisputably an interconnection agreement pursuant to 47 U.S.C. § 252 and ARSD 20:10:32:21, the Commission concludes that the MSA is also part of an integrated interconnection agreement that is required to be filed and approved.

4. Qwest's Motion to Dismiss should be denied.

5. The Agreements do not discriminate against a telecommunications carrier that is not a party thereto and are consistent with the public interest, convenience, and necessity.

It is therefore

ORDERED, that Qwest's motion to dismiss is denied; and it is further

ORDERED, that the Commission approves the Master Services Agreement between Qwest and MCI dated July 16, 2004.

Dated at Pierre, South Dakota, this 29th day of October, 2004.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Helsinki Kalbo</i></u>
Date:	<u>10/29/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

2.5.4 Advance Payments

To safeguard its interests, the Company may require a Customer to make an Advance Payment before services and facilities are furnished. The Advance Payment will not exceed an amount equal to the Non-Recurring Charge(s) and three months' charges for the service or facility. In addition, where special construction is involved, the Advance Payment may also include an amount equal to the estimated Non-Recurring Charges for the special construction and Recurring Charges (if any) for a period to be set between the Company and the Customer. The Advance Payment will be credited to the Customer's initial bill. An Advance Payment may be required in addition to a deposit.

2.5.5 Deposits

- (a) Applicants for service or existing Customers whose financial condition is not acceptable to the Company, or is not a matter of general knowledge, may be required at any time to provide the Company a security deposit. The deposit requested will be in cash or the equivalent of cash, and will be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- (1) two month's charges for a service or facility which has a minimum payment period of one month; or

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2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

- (2) the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable. In addition, the Company shall be entitled to require such an applicant or Customer to pay all its bills within a specified period of time, and to make such payments in cash or the equivalent of cash. At the Company's option, such deposit may be refunded to the Customer's account at any time. Also, the Company reserves the right to cease accepting and processing Service Orders after it has requested a security deposit and prior to the Customer's compliance with this request.
- (b) A deposit may be required in addition to an advance payment.
- (c) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- (d) Deposits held will accrue interest at a rate specified by the Commission.

2.5.6 Discontinuance of Service

- (a) Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer in accordance with applicable state law, discontinue or suspend service without incurring any liability.
- (b) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.

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2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

- (c) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- (d) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, failing to discharge an involuntary petition within the time permitted by law, or abandonment of service, the Company may, with prior notice to the customer, immediately discontinue or suspend service without incurring any liability.
- (e) Upon any governmental prohibition, or required alteration of the services to be provided or any violation of any applicable law or regulation, the Company may immediately discontinue or suspend service without incurring any liability.
- (f) The Company may discontinue the furnishings of any and/or all service(s) to the Customer, without incurring any liability:
 - (1) Immediately if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section if:
 - (a) use of service in such a manner as to interfere with the service of other users; or
 - (b) use of service for unlawful purposes.

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2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

2.5.6 Discontinuance of Service (Cont'd)

- (2) Upon ten (10) days written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.5; or
- (3) Ten (10) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that (10) day period; or
- (g) The suspension or discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished during the time of or up to suspension or discontinuance or for any and all applicable early termination charges.
- (h) Upon the discontinuance of service to the Customer under Section 2.5.6 (a) or 2.5.6 (b), all applicable charges, including early termination charges, shall become due, as specified in Section 2.7.2. This is in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff.

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2. REGULATIONS (Cont'd)

2.6 Allowances for Interruptions of Service

2.6.1 Credit for Interruptions: When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the Customer, or the operation or failure of the facilities or equipment provided by the Customer, a pro rata adjustment of the monthly Recurring Charges subject to interruption will be allowed for the service and facilities rendered useless and inoperative by reason of the interruption whenever said interruption continues for a period of 24 hours or more from the time the interruption is reported to or known to exist by the Company, except as otherwise specified in the Company's tariffs. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the monthly Recurring Charges specified hereunder for Local Line or Local Trunk Service and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit. Credit allowances for service outages that exceed 24 hours in duration will be rounded up to the next whole 24 hours.

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2. REGULATIONS (Cont'd)

2.6 Allowances for Interruptions of Service (Cont'd)

2.6.2 Limitations on Allowances

No credit allowance will be made for:

- (a) interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other common carrier providing service connected to the service of the Company;
- (b) interruptions due to the negligence of any person other than the Company including but not limited to the Customer or other common carriers connected to the Company's facilities;
- (c) interruptions due to the failure or malfunction of non-Company equipment;
- (d) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (e) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- (f) interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- (g) interruption of service due to circumstances or causes beyond the control of the Company.

2.6.3 Use of Alternative Service Provided by the Company: Should the Customer elect to use an alternative service provided by the Company during the period that a service is interrupted, the Customer must pay the tariffed rates and charges for the alternative service used.

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2. REGULATIONS (Cont'd)

2.7 Cancellation of Service

2.7.1. Cancellation of Application for Service

- (a) Applications for service can not be canceled unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- (b) Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.

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2. REGULATIONS (Cont'd)

2.7 Cancellation of Service (Cont'd)

2.7.1. Cancellation of Application for Service (Cont'd)

- (c) The special charges described in 2.7.1 (a) and 2.7.1 (b) will be calculated and applied on a case-by-case basis.

2.7.2 Cancellation of Service by the Customer

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than service interruption (as defined in 2.6.1 above), the Customer agrees to pay to Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in 2.5.2: all costs, fees and expenses reasonable incurred in connection with:

- (a) all Non-Recurring Charges reasonably expended by Company to establish service to the Customer, plus
- (b) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of the Customer, plus
- (c) all early termination charges as specified in 2.7.3

The Customer should also give the Company at least thirty (30) days written or oral notice of the cancellation of service.

2.7.3 Early Termination Charges

Should Customer terminate service prior to the completion of the term specified in the Service Order, Customer shall be obligated to pay Company an early termination charge equal to all non-recurring and recurring charges for the remaining term plus 75% of the average monthly billings for service for the three months prior to the termination month (or such lesser period if fewer than three months of Service were utilized) multiplied by the number of remaining months in the term of the service plan. The early termination charges are due and payable immediately upon cancellation of service.

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2. REGULATIONS (Cont'd)

2.8 Transfer and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company; (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

2.9 Notices and Communications

2.9.1 The Customer shall designate on the Service Order, if applicable, or to the company directly, an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.

2.9.2 The Company shall designate on the Service Order, if applicable, or to the company directly, an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.

2.9.3 All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

2.9.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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2. REGULATIONS (Cont'd)

2.10 Jurisdictional Nature of Traffic

2.10.1 Customer agrees, represents and warrants that all traffic being delivered by Customer to Company for local termination, and all traffic that Company delivers to Customer that has originated in the same local calling area in which Customer's NXX is assigned and/or in which such traffic is terminated to Customer, is local traffic or is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction.

2.10.2 Customer further agrees to indemnify, defend and hold harmless Company and its parent company, affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred in connection with: Customer's breach or failure of any representation or warranty; Customer's traffic being processed through the Company switch/node; or the effect of any regulatory or legal modifications/change of law.

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3. SERVICE DESCRIPTIONS

3.1 Local Exchange Service: The Company's Local Telephone Service provides a Customer with the ability to connect to the Company's switching network which enables the Customer to:

- (a) place or receive calls to any calling Station in the local calling area, as defined herein;
- (b) access enhanced 911 Emergency Service where available;
- (c) access the interexchange carrier selected by the Customer for interLATA, intraLATA, interstate or international calling;
- (d) access Operator Services;
- (e) access Directory Assistance;
- (f) place or receive calls to 800 telephone numbers;
- (g) access Telecommunications Relay Service.

The Company's service will automatically block originating calls to other telephone company's caller-paid information services (e.g. 900, 976) at no charge. Calls to those numbers and other numbers used for caller-paid information services will be unblocked on a per directory number basis only.

3.1.1 Local Calling Areas: Company will offer Services statewide. The specific calling areas serviced by Company can be found in the tariff on file by the incumbent local exchange provider. The NXX's associated with each particular exchange or zone may be found in the telephone directory published by the incumbent local exchange provider in the Customer's exchange area.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.1 Local Exchange Service (Cont'd)

3.1.2 Basic Business Lines

Basic Business Lines provide basic access service and supply a single, voice-grade communications channel for single line telephones, key telephone systems, modems and other devices needing access to the public switched telephone network (PSTN). Basic Business Line Customers will be charged a Non- Recurring Charge (NRC), a Monthly Recurring Charge (MRC) and usage charges as specified below as well as all applicable Federal, State and Local Taxes and Surcharges.

(a) Basic Business Lines include the following standard attributes at no cost:

Touchtone
One White Pages Directory Listing
911 Access
One Yellow Pages Directory Listing

Blocking Restrictions- Basic Business Lines come standard with all Caller Paid Service, 500 and 900 area codes blocked.

(b) Basic Business Line Optional Features: Basic Business Line Customers may order the following Optional Features listed below at the Rates specified below.

Call Forward Busy
Call Forward No Answer
Hunting
Call Forward Variable
Call Waiting
Speed Calling 8
Three Way Calling
Caller ID Number Only
Caller ID Name & Number
Voicemail

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3. SERVICE DESCRIPTIONS (Cont'd)

3.1 Local Exchange Service (Cont'd)

3.1.2 Basic Business Lines (Cont'd)

(c) Basic Business Line Rates and Charges: Basic Business Line Customers will be charged applicable Non-Recurring, Monthly Recurring and Usage Charges as specified below.

(1) Monthly Recurring Charges

Basic Local Line -	Line Charge
Two Year Term	\$32.45

Optional Features:

Call Forward Busy	\$ 5.50
Call Forward No Answer	\$ 4.00
Hunting	\$ 8.95
Call Forward Variable	\$ 5.00
Call Waiting	\$ 5.50
Speed Calling 8	\$ 4.00
Three Way Calling	\$ 4.00
Caller ID Number Only	\$ 7.50
Caller ID Name & Number	\$ 7.95
Voicemail	\$ 13.95

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3. SERVICE DESCRIPTIONS (Cont'd)

3.1 Local Exchange Service (Cont'd)

(c) Basic Business Line Rates and Charges (Cont'd)

(2) Non-Recurring Charges

Installation Charge (Per Line)

First Line	\$47.00
Additional Line(s)	\$47.00
Features	\$11.00
Service Order Change	\$25.00

NOTE: Non-recurring Service Order Change charges will not apply during the initial 30 day period following completion of a service order.

3.1.3 Private Branch Exchange (PBX) Trunks

3.1.3.1 Service Description:

PBX Trunk Service provides customers with access to and from the Public Switched Telephone Network (PSTN) for inbound, outbound or two-way call traffic.

Two-Way Trunks: A Trunk which allows traffic to be transmitted from either the customer's PBX or the Company switching equipment.

One-Way, out only: A One-Way Trunk that only allows traffic originating in the customer's PBX to be transmitted to the Company switching equipment.

One-Way, in only: A One-Way Trunk that only allows traffic from the Company switching equipment to be transmitted to the customer's PBX.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.1 Local Exchange Service (Cont'd)

3.1.3 Private Branch Exchange (PBX) Trunks (Cont'd)

Direct Inward Dialing (DID) Service: A special trunking arrangement which permits incoming calls from the exchange network to reach a specific PBX station directly without an attendant's assistance.

3.1.3.2 Rates and Charges: PBX Trunk Customers will be charged applicable Non-Recurring Charges, Monthly Recurring Charges and Usage Charges, where applicable. Additional Federal, State, and Local taxes and Surcharges may also apply. Rates below are based on a two year term. Rates for alternate term lengths may be provided on an individual case basis.

<u>PBX Trunks</u>	MRC	NRC
Two-Way	\$ 41.45	\$ 47.00
One-Way, out only	\$ 41.45	\$ 47.00
One-Way, in only	\$ 41.45	\$ 47.00
<u>Optional Features</u>		
DID Termination	\$ 35.00	\$ 40.00
Hunting	\$ 8.95	\$ 11.00
<u>DID Numbers</u>		
Per Blocks of 20	\$ 3.00	\$ 20.00
Per Blocks of 100	\$ 15.00	\$ 100.00

3.1.4 Business Line and Trunk Early Termination Charge: In addition to the early termination charges set forth in Section 2.7.3 of this tariff, Customers shall also incur a per line charge of Fifty Dollars (\$50.00) per line/trunk that is terminated prior to the end of the Customer's service term.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.2 Directory Assistance

Directory Assistance service provides a Customer with requested telephone numbers and/or addresses within the Customer's local calling area. Customers can reach a Directory Assistance Operator by dialing 411 or 555-1212. The Directory Assistance Operator will furnish up to three items per call or will let the Customer know if the requested information cannot be found. Customers will be charged for calls placed to Directory Assistance even when the requested information cannot be found.

3.2.1 Each call to Directory Assistance will be charged as follows:

Per Call \$1.25

3.2.2 Call Completion Feature: Customers using Company's Directory Assistance Service will have the option of completing calls through Company's Call Completion feature. At the Customer's request, the Directory Assistance Operator will connect the Customer to the requested telephone number. In addition to the per call charge for Directory Assistance listed above, Customers will be charged for duration of the completed call as follows:

- (a) Customers placing the call from a telephone line that is subscribed to Company local service will be charged according to Customer's current Company rate plan.

Other than the Directory Assistance per call charge and the applicable usage charges for the completed call, there is no additional charge for using this feature.

3.2.3 A credit will be given for calls to Directory Assistance as follows:

- (a) The Customer experiences poor transmission or is cut-off during the call; or
- (b) The Customer is given an incorrect telephone number.

To obtain such a credit, the Customer must notify its Customer Service representative within 48 hours of placing the call to Directory Assistance.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.3 Operator Assistance

Operator Assistance: A Customer may obtain the assistance of a local operator to complete local exchange telephone calls in the following manner. In addition to the rates specified in Section 3.1, surcharges as specified in Section 3.3.1 will apply:

Third Number Billing: Provides the Customer with the capability to charge a local call to a third number which is different from the called or calling party. The party answering at the third number has the option to refuse acceptance of the charges in advance or when queried by the operator.

Collect Calls: Provides the Customer with the capability to charge a call to the called party. On the operator announcement of a collect call, the called party has the option to refuse acceptance of charges in advance or when queried by the operator.

Calling Cards: Provides the Customer with the capability to place a call using a calling card of an Interchange Carrier with or without the assistance of an operator.

Person to Person: Calls completed with the assistance of an operator to a particular Station and person specified by the caller. The call may be billed to the called party.

Station to Station: Calls completed with the assistance of an operator to a particular Station. The call may be billed to the called party.

3.3.1 Operator Assisted Surcharges: The following surcharges will be applied on a per call basis.

Calling Card	\$1.00
Third Number Billing	\$1.75
Collect Calling	\$1.75
Person to Person	\$3.50
Station to Station	\$1.75

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3. SERVICE DESCRIPTIONS (Cont'd)

3.3 Operator Assistance (Cont'd)

3.3.2 Usage Rates for Operator Completed Calls: The following rate applies on a per minute basis to calls completed by an operator. The per minute charge begins once the operator has connected the call. Calls are billed in six (6) second increments with an initial billing period of eighteen (18) seconds. The duration of each call for bill purposes will be rounded off to the nearest highest increment. Fractional cents will be rounded to the nearest cent using natural rounding, \$0.10 per minute of use.

3.3.3 Busy Line Verification and Interrupt Service: Busy Line Verification and Interrupt Service, which is furnished where and to the extent that facilities permit, provides the Customer with the following options:

- (a) Busy Line Verification: Upon request of the calling party, the Company will determine if the line is clear or in use and report to the calling party.
- (b) Busy Line Verification with Interrupt: The operator will interrupt the call on the called line only if the calling party indicates an emergency and requests interruption.
- (c) Rates: Rates for Busy Line Verification and Interrupt Service, as specified below, will apply under the following circumstances:

The operator verifies that the line is busy with a call in progress.

The operator verifies that the line is available for incoming calls.

3. SERVICE DESCRIPTIONS (Cont'd)

3.3 Operator Assistance (Cont'd)

3.3.3 Busy Line Verification and Interrupt Service (Cont'd)

(c) Rates (Cont'd)

The operator verifies that the called number is busy with a call in progress and the Customer requests interruption. The operator will then interrupt the call, advising the called party the name of the calling party. One charge will apply for both verification and interruption.

Per Request

Busy Line Verification \$1.25
Busy Line Interrupt \$3.00

3.4 Directory Listings:

The Company shall arrange for the listing of the Customer's main billing telephone number in the directory(ies) published by the dominant Local Exchange Carrier in the service area at no additional charge. At a Customer's option, the Company will arrange for other types of listings and additional listings and will pass onto the Customer the charges, if any, for such listings that the dominant Local Exchange Carrier charges Company. Listings will be non-published at the specific request of the Customer.

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3. SERVICE DESCRIPTIONS (Cont'd)

- 3.5 Telecommunications Relay Service: Telecommunications Relay Service enables deaf, hard-of-hearing or speech-impaired persons who use a text telephone or similar devices to communicate freely with the hearing population for using the text telephone and vice versa. The Company does not impose any charge to end users for access to Telecommunications Relay Service. However, persons using this Service are liable for applicable per call/increment charges.
- 3.6 Line Restoral Charge: A Line Restoral charge may apply for line restoral after temporary interruption of service initiated by the Company. Company will pass onto the Customer the charges, if any, for such restoral that the dominant Local Exchange Carrier charges Company. If service is temporarily interrupted and payment is not received within 10 days following the interruption, the Company reserves the right to discontinue service. If service is discontinued and subsequently re-established, charges apply as for a new installation of service.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.7 Miscellaneous Service and Equipment

3.7.1 Caller ID

This service utilizes specific network capabilities to transmit and display the number associated with an incoming call to the called party's access line. The number of the incoming call is transmitted during the silent interval between the first and second ring of the called party's line. Caller ID subscribers must provide, and connect, their own compatible premises equipment in order to process and display the number transmission. The company will forward all telephone numbers where technically feasible.

If a calling party has activated blocking, the number will not be transmitted to the display equipment of a Caller ID subscriber. Instead, the Caller ID privacy indicator notifies the Caller ID subscriber that the calling party chose to block number delivery.

3.7.2 Caller ID Blocking

Caller ID Blocking allows the caller to prevent the delivery of his/her calling data to a Caller ID subscriber on a per call basis (Caller ID Blocking - Per Call) or per line basis (Caller ID Blocking - Per Line).

(a) Caller ID Blocking - Per Call

This service will block the delivery of the caller's data to a Caller ID subscriber for one call only and may be activated from all single party access lines by dialing *67 (1167 from a rotary phone) prior to placing the call. Per the FCC Caller ID order, Caller ID Blocking-Per Call is provided to all customers at no charge.

Per FCC Docket 91-281, per call blocking will be provided on calls originating from public, semi-public or other pay stations used by the general public and party lines.

3.0 SERVICE DESCRIPTIONS (Cont'd)

3.8 Miscellaneous Service and Equipment (Cont'd)

3.7.2 Caller ID Blocking (Cont'd)

(b) Caller ID Blocking - Per Line

This service will automatically block the delivery of the caller's data to a Caller ID subscriber on all calls and will be made available or offered, at no charge for victims of domestic violence, domestic violence programs, social welfare agencies, health and counseling centers, public service hotlines, law enforcement agencies and staff thereof. In addition, all customers call request per line blocking at no charge. Per line blocking call be deactivated by dialing *67 (1167 from a rotary phone) prior to placing the call.

3.7.3 Special Conditions for Caller ID

- a) An originating caller's data may not be displayed to the called party under the following conditions:
- 1) The caller's data will not be displayed if the called party is off-hook. The called party must be on-hook to receive the caller's data. If the customer subscriber to both Call Waiting and Caller ID, and is on an existing call, the second incoming call information will not be displayed. Instead, the called party will receive the usual Call Waiting tone.
 - 2) The caller's data will not be displayed if the called party answers the incoming call during the first ring interval.
 - 3) Identification of names, specific stations or extensions served by a PBX or Key System is not possible. The main directory number or name and number (if available) of the PBX or Key System will be displayed.
 - 4) Caller ID Service cannot be provided if the calling party "Unavailable" display.

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3.0 SERVICE DESCRIPTIONS (Cont'd)

3.7 Miscellaneous Service and Equipment (Cont'd)

3.7.3 Special Conditions for Caller ID (Cont'd)

- 5) The caller's data will be unavailable if it is from another office that is not linked by appropriate facilities with the called party's office.
 - 6) The calling party has activated blocking.
 - 7) Caller ID services do not display a directory number or name and number (if available) for operator assisted calls, calls marked private by the originator or calls originating from pay and party line stations.
- b) The following special conditions apply to Caller ID services based on the FCC Caller ID Order effective 12/1/95:
- 1) If a customer dials a "1-800" or other Automatic Number Identification (ANI) Service number, the telephone number that they are calling from will be revealed to the called party through ANI technology. Even if the customer has per line blocking or has activated per call blocking, the 800 number party has the right to obtain this information through ANI.
 - 2) ANI information may not be reused or resold for other purposes without a caller's consent, even where the called party has paid for the call.
 - 3) Caller ID services are available on all long distance calls where technically feasible.
 - 4) All calling data will be displayed to E911 through ANI technology, even if the customer has per line blocking or has activated per call blocking.
 - 5) All calling data will be passed, even for customer who do not subscribe to Caller ID.

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3.0 SERVICE DESCRIPTIONS (Cont'd)

3.8 Miscellaneous Service and Equipment (Cont'd)

3.7.3 Special Conditions for Caller ID

- 6) Per Call Blocking will be available to all customers. (The FCC Order overrules all state PUC/PSC decisions on Per Call Blocking.)

3.7.4 Call Trace

This service enables the customer to initiate a trace of the last incoming call completed by dialing an activation code (*57) immediately after terminating the call, thus enabling the Company's equipment to record the incoming call detail (not the conversation). Call trace information will only be given to law enforcement agencies and not to the subscriber. Incoming call detail includes: The calling number, the time the trace was activated, and in some locations, the time the traced call was received. The customer is required to contact the telephone company business office during normal business hours, which will refer the customer to appropriate law enforcement agencies, or contact the law enforcement agency directly. Call trace detail will be retained by the company and made available to the local law enforcement for ten business days after the trace has been initiated. Only calls from locations with compatible signaling services are traceable using Call Trace. Call Trace is available on a usage sensitive basis only.

Rate per incident

\$ 1.00

3.7.5 Intercept and Number Referral Service

(A) Intercept

Is an optional service employed after telephone service has been disconnected, whereby an automated system repeats the called number and provides the status of the telephone service. Intercept Service is available for published numbers free of charge for the first 90 days of use. Intercept Service for published numbers in place longer than 90 days will be charged as outlined below. Intercept Service for unpublished numbers will be charged as outlined below from the start of the Number Referral Service.

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3. SERVICE DESCRIPTIONS (Cont'd)

3.7.5 Intercept and Number Referral Service (Cont'd)

(B) Number Referral Service

Is an optional service employed after telephone service has been disconnected, whereby an automated system repeats the called number and provides callers with the new number. Number Referral Service is available for published numbers free of charge for the first 90 days of use. Number Referral Service for published numbers in place longer than 90 days will be charged as outlined below. Number Referral Service for unpublished numbers will be charged as outlined below from the start of the Number Referral Service.

<u>Duration</u>	<u>Non-recurring Charge</u>
1 month:	\$10.00
2 months:	\$20.00
3 months:	\$30.00
6 months:	\$45.00
9 months:	\$55.00
12 months:	\$65.00

3.8 Service Calls

When a customer reports trouble to the Company for clearance and no trouble is found in the Company's facilities, the Customer may be responsible for payment of a charge calculated from the time Company's personnel are dispatched to the Customer Premise until the work is completed. Company will pass onto the Customer the charges, if any, for such service calls that the dominant Local Exchange Carrier charges Company.

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4. INDIVIDUAL CASE BASIS (ICB) ARRANGEMENTS

Arrangements will be developed on a case-by-case basis in response to a bonafide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such service in this tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis. ICB rates, service descriptions and length of such agreement will be filed with the Commission when required.

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5. PROMOTIONAL OFFERINGS

The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. Promotional offerings will only be available where facilities and billing capabilities permit.

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INTEREXCHANGE SERVICES TARIFF

Original Title Page

XO Communications Services, Inc.

Regulations, Descriptions and Rates

Applicable to Furnishing

Interexchange Services

with the State of South Dakota

This tariff contains the descriptions, regulations and rates applicable to the furnishing of service and facilities for telecommunications services within the State of South Dakota by XO Communications Services, Inc. ("Company"). This tariff is on file with the South Dakota Public Utilities Commission, and copies may also be inspected, during normal business hours, at the following location: Capitol Building, 1st floor, 500 East Capitol Avenue, Pierre, SD 57501-5070.

 INTEREXCHANGE SERVICES TARIFF

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CHECK SHEET

The Title Page through Page 59 inclusive of this tariff are effective on the date shown. Original and Revised Pages as named below contain all changes from the original tariff that are in effect on the date shown.

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INTEREXCHANGE SERVICES TARIFF

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TARIFF FORMAT

- A. Sheet Numbering** – page numbers appear in the upper right corner of the page. Pages are numbered sequentially. When a new page is added between pages already in affect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Sheet Revision Numbers** – Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the South Dakota Public Utilities Commission. For example, the 4th revised page 14 cancels the 3rd revised page 14. Consult the Check Page for the Sheet currently in effect.
- C. Check Sheets** – When a tariff filing is made with the South Dakota Public Utilities Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.)

INTEREXCHANGE SERVICES TARIFF

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APPLICATION OF TARIFF

This tariff contains the regulations and rates applicable to the provision of intrastate interexchange services by XO Communications Services, Inc. (hereafter the "Company") from its operating locations throughout the state of South Dakota. Service is furnished by means of wire, terrestrial microwave radio, optical, fibers, satellite circuits or a combination thereof. Service is subject to transmission, atmospheric conditions and like conditions.