

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1251

In the Matter of )  
)  
COVAD COMMUNICATIONS COM- )  
PANY; ESCHELON TELECOM OF )  
OREGON, INC.; INTEGRA TELECOM )  
OF OREGON, INC.; MCLEODUSA )  
TELECOMMUNICATIONS SERVICES, )  
INC.; and XO COMMUNICATIONS )  
SERVICES, INC. )  
)  
Request for Commission Approval of Non- )  
Impairment Wire Center List. )

ORDER ON  
RECONSIDERATION

**DISPOSITION: RECONSIDERATION GRANTED;  
SETTLEMENT AGREEMENT APPROVED**

**Introduction.** This case involves matters relating to future availability of certain Unbundled Network Elements (UNEs) in the provision of telecommunications services to the public and the interplay of federal and state regulation of telecommunications. For a number of years subsequent to the passage of the federal Telecommunications Act of 1996 (the Act), Incumbent Local Exchange Carriers (ILECs) were required to provide Competitive Local Exchange Carriers (CLECs) with access to certain of the ILECs’ telecommunications facilities and services on an unbundled basis. The Federal Communications Commission (FCC) deemed this necessary because alternative facilities from other providers were not sufficiently available within the service areas of wire centers where the CLECs operated to permit adequate competition to flourish. The FCC’s expectation was that CLECs could use these UNEs in various combinations either in conjunction with their own facilities or on a resale basis to offer telecommunications services to the public.

The common expression used to characterize these wire centers was that they constituted markets that were competitively “impaired.” The following question then was raised: “[W]hen will there be a sufficient number of alternative providers of telecommunications facilities within the serving area of particular wire centers so that CLECs are not impaired in their ability to compete without access to those ILEC facilities as UNEs and thus, the ILECs’ offering of ILEC facilities on an unbundled basis will no longer be mandated?”

On February 4, 2005, the FCC released its Triennial Review Remand Order (*TRRO*),<sup>1</sup> which answered that question, at least in part. In that order, the FCC established a default date of March 11, 2006, terminating ILECs' obligations to offer unbundled high-capacity (DS1/DS3/dark fiber) loops and unbundled high-capacity (DS1/DS3/dark fiber) interoffice transport in those wire centers certified by the ILECs to satisfy the *TRRO* impairment analysis criteria. The criteria were the number of business lines and the number of fiber-based collocators in each wire center.<sup>2</sup>

At the same time, CLECs were given the opportunity to challenge the designation of the wire centers. In so doing, a CLEC was required to "undertake a reasonably diligent inquiry into whether the wire centers in question meet the criteria and then self-certify to the ILEC that the CLEC was entitled to access to the aforementioned UNEs." Upon making that showing, the *TRRO* required that the ILEC must "immediately process" the UNE order and then may subsequently bring a dispute before a state commission or other authority if it contests the CLEC's access to the UNE. If the ILEC prevails, the CLEC may be back-billed for the time period when it should have paid the higher rate.<sup>3</sup>

This proceeding arose out of a Qwest petition submitting its list of non-impaired wire centers in Oregon and the objections by Covad Communications Company; Eschelon Telecom of Oregon, Inc.; Integra Telecom of Oregon, Inc.; McLEODUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. (Joint CLECs), to that list and to the procedures Qwest proposes to follow under the *TRRO*.

On March 20, 2007, the Commission issued Order No. 07-109 granting in part and denying in part the petition Qwest had filed. The Commission ruled, at page 13, that with respect to each new wire center Qwest wished to add to the non-impaired list, Qwest was to provide "detailed wire center-specific information...equivalent in scope and particularity to that which was provided in this proceeding pursuant to CLEC data requests." The Commission also asked Qwest and the CLECs to jointly submit "a revised list of wire centers, including their classification and the bases therefor, supported by appropriate data, consistent with the findings and conclusions of the Order," "a document setting forth the procedures for the evaluation and implementation of future wire center classifications consistent with the findings and conclusions of the Order" and "a cost study...to establish a nonrecurring charge for the conversion of Unbundled Network Elements to tariffed special access services."<sup>4</sup>

On April 18, 2007, Qwest and the Joint CLECs filed a motion for extension of time. In that motion, the parties noted that the ordering clause related both to Issue 4 and its four sub-issues, all decided by the Commission, and Issue 5, which

<sup>1</sup> *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No. 01-338, FCC No. 04-290, Order on Remand.

<sup>2</sup> *Id.*, ¶¶ 146, 155, 166, 174, 178, 182 and 195.

<sup>3</sup> *Id.*, ¶ 234.

<sup>4</sup> Order, p. 20, Ordering Clauses 2-4.

directed the parties to develop order processing procedures that were reasonably consistent with the Order's intent.

On April 19, 2007, in order to comply with Ordering Clause 2, Qwest filed a revised list of wire centers, including their classification and the bases therefor, supported by appropriate data. Qwest also submitted the required cost study for non-recurring charges for the conversion of UNEs to tariffed special access services as required by Ordering Clause 4. That same day, the Commission granted the joint motion for an extension of time. Although it was the intention of the Commission that the parties were to submit a document setting forth order processing procedures for CLEC orders at non-impaired wire centers reasonably consistent with the intentions the Commission set forth in the Order, the order granting the extension of time did not so state with particularity.

On May 21, 2007, Qwest filed a Motion for Reconsideration and/or Clarification Regarding Wire Center Update Data and Regarding Procedures for CLEC Orders in Non-impaired Wire Centers. Qwest asked that the Commission clarify that Qwest needed to file information only to the level specified in the Commission's Bench Requests, rather than the level of specificity in the CLECs' original data requests. Qwest also asked the Commission to clarify its intent that it ordered implementation of procedures applicable to non-impaired wire center order fulfillment and further stated that it would comply with the Order and not reject or block orders by CLECs for UNEs at non-impaired wire centers. Qwest stated that it was unclear exactly what procedures the Commission was requesting that Qwest and the CLECs submit.<sup>5</sup>

On June 22, 2007, before the Commission had the opportunity to rule on the Qwest Motion, Qwest submitted, on its own behalf and that of the Joint CLECs, a Joint Motion for Approval of Settlement Agreement (Settlement Agreement) and Narrative Supporting Agreement (Narrative). On June 27, 2007, the Parties filed a Notice of Joint Filing and Amended Request for Order Approving Settlement Agreement (Settlement Motion), which replaced entirely the Parties' June 22, 2007, submission.

In the Narrative, the parties represent that they have reached resolution of the disputed issues in this case and seek Commission approval of the Settlement Agreement, which is part of a multi-state resolution of their disputes on the open issues. The Settlement Agreement, captioned "Multi-State Settlement Agreement Regarding Wire Center Designations and Related Issues" is affixed to the Narrative as Attachment 1.

Each of the issues for which Qwest has sought reconsideration and/or clarification has been resolved among the parties in the Settlement Agreement. Therefore, rather than provide responses to each of the issues raised in the context of the Qwest Motion, by Order No. 07-318, entered July 23, 2007, we granted the Motion

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<sup>5</sup> Settlement Motion, p. 6.

for Reconsideration and/or Clarification and in this Order consider the Joint Motion for Approval of Settlement Agreement in the context of OAR 860-014-0095.

On July 19, 2007, Staff filed comments (Comments) recommending approval of the Settlement Agreement, but stated:

[t]he Commission should make clear in its order approving the Settlement Agreement that, by approving the Settlement Agreement, the Commission has not prejudged the merits of the amendments. The Commission will review and approve or reject any filed amendments separately under OAR 860-016-0020.

**Terms of the Settlement Agreement Affecting Oregon and Resolution of Issues Under Reconsideration.**

**Settlement Sections I and II.** Section I of the Settlement Agreement consists of prefatory clauses and recitations regarding the background leading up to the settlement and describes how the Settlement Agreement was reached. Section II sets forth the applicable definitions and key terms used in the Settlement Agreement.

**Findings of Fact and Conclusions of Law.** While neither of these sections is substantive in nature, their inclusion is necessary to resolve or preclude ambiguities in the substantive sections that follow. We therefore approve Sections I and II as a prerequisite for our consideration of approval of the entire Settlement Agreement.

**Issues 1-3, Ordering Clause 2. Means for Establishment of the Commission-Approved List of Initial Non-Impaired Wire Centers.**

Ordering Clause 2 on page 20 of Order No. 07-109 states as follows: “Within 30 (thirty) days of the effective date of this Order, Qwest shall submit a revised list of wire centers, indicating their classification and the bases therefor, supported by appropriate data, consistent with the findings and conclusions of this Order.”

**Settlement Section III.** Section III of the Settlement Agreement sets forth the list of initial non-impaired wire centers as required in the first part of Ordering Clause 2. According to the Settlement Agreement, the Joint CLECs agreed that, upon the Effective Date of the Settlement Agreement,<sup>6</sup> they will not order Non-Impaired Facilities identified in the Initial Commission-Approved Wire Center List. In Oregon, the list is as follows:

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<sup>6</sup> With respect to each of the Oregon wire centers on the list, that date is March 11, 2005.

Wire Center	CLLI Code	Non-Impairment Classification	Non-Impaired Elements
Bend	BENDOR24	Tier 2	DS3 Transport
Eugene 10 <sup>th</sup> Ave.	EUGNOR53	Tier 1	DS1 and DS3 Transport
Medford	MDFDOR33	Tier 2	DS3 Transport
Portland Alpine	PTLDOR11	Tier 2	DS3 Transport
Portland Belmont	PTLDOR13	Tier 2	DS3 Transport
Portland Capitol	PTLDOR69	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS1 and DS3 Loops
Salem Main	SALMOR58	Tier 1	DS1 and DS3 Transport

The list was accompanied by the following notes:

- DS1 Transport circuits provided by Qwest that originate in a “Tier 1” wire center and terminate in a “Tier 1” wire center are considered non-impaired.
- DS3 Transport circuits provided by Qwest that originate in a “Tier 1” or “Tier 2” wire center and terminate in a “Tier 1” or “Tier 2” wire center are considered non-impaired.
- DS1 loops provided by Qwest that reside in a wire center classified as “DS1 Loops” are considered to be non-impaired.
- DS3 loops provided by Qwest that reside in a wire center classified as “DS3 Loops” are considered to be non-impaired.
- 30 days + ED = 30 days after Commission Order approving Settlement Agreement with Attachment A.

**Settlement Section V.** Section V of the Settlement Agreement settles Issues 2 and 3 and provides the methodology agreed upon by the Parties to determine non-impairment and tier designations, including how “business lines” and “fiber-based collocators” are calculated.

**Findings of Fact and Conclusions of Law.** The list of non-impaired wire centers and associated notes set forth in the Settlement Agreement reasonably reflect the record in this case. We approve the list and notes as they refer to Oregon wire centers in Attachment A as agreed to by the Parties in Settlement Section III. The methodology set forth in the Settlement Agreement is applicable both to the Initial List, satisfying the remaining portions of Ordering Clause 2, when associated with data already submitted in this proceeding, and to wire centers that may be added at later dates. The methodology agreed upon by the Parties constitutes a reasonable interpretation of the *TRRO* as discussed in Order No. 07-109. The terms and conditions of Settlement Section V and associated attachments are approved.

**Issues 4 and 5. Ordering Clause 3. What procedures should be adopted for evaluation and implementation of future wire center classifications, and how should Qwest process orders submitted by CLECs for UNEs in non-impaired wire centers?**

Ordering Clause 3 on page 20 of Order No. 07-109 states as follows: “Within 30 (thirty) day of the effective date of this Order, Qwest shall submit a document setting forth the procedures for the evaluation and implementation of future wire center classifications consistent with the findings and conclusions of this Order.”

As noted above, Settlement Section V sets forth the agreed methodology for initial and future determination of non-impairment and/or tier designations, including how to count business lines and fiber-based collocators.

**Settlement Section VI.** Section VI of the Settlement Agreement summarizes the Parties’ agreement regarding how Qwest can request Commission approval of future non-impairment designations and additions to the Initial List of Commission approved non-impaired wire centers.

**Settlement Section VII.** Section VII of the Settlement Agreement contains a number of miscellaneous provisions based on the Parties’ agreement regarding various issues, including Interconnection Agreement provisions and amendments, refunds related to Qwest identified non-impairment designations that are not identified as non-impaired, credits to CLECs that have been back-billed to March 11, 2005, for facilities with an effective non-impairment date of July 8, 2005 (instead of March 11, 2005), as well as general provisions about settlement, precedent and termination of the Settlement Agreement.

**Findings of Fact and Conclusions of Law.** The methods, terms and conditions described in the Settlement Agreement as agreed upon by the Parties constitute a mutually agreed upon resolution of the numerous outstanding sub-issues among the Parties. We find those methods, terms and conditions consistent with a reasonable interpretation of the *TRRO* as discussed in Order No. 07-109. The methods, terms and conditions of Settlement Section V, as noted above, and Settlement Sections VI and VII and their associated attachments are approved.

**Staff Comments on the Exercise of Commission Authority.** We accept Staff’s Comments on the importance of acknowledging the Commission process for approval of modifications to Interconnection Agreements and incorporate a specific reference to our Rules in this Order.

**ORDER**

IT IS ORDERED that:

1. The Motion for Approval of Settlement Agreement and Narrative Supporting Agreement is GRANTED.
2. The Multi-State Settlement Agreement Regarding Wire Center Designations and Related Issues affixed to this Order as Attachment 1 is APPROVED to the extent that it relates to the provision of telecommunications services within the State of Oregon.
3. Within 30 (thirty) days of the effective date of this Order, Parties not currently in arbitration proceedings before the Commission pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 shall file amended Interconnection Agreements consistent with the Settlement Agreement as set forth in Attachment B. Parties currently engaged such arbitration proceedings shall file amended Interconnection Agreements consistent with the Settlement Agreement as well as with such other provisions as required by the Commission's arbitration order.
4. Review and approval or rejection of Interconnection Agreements and any filed amendments shall be pursuant to OAR 860-016-0020.
5. This docket shall remain open to review and assess compliance with this Order and to resolve any matters arising therefrom.

Made, entered and effective JUL 31 2007.

  
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**Lee Beyer**  
 Chairman

  
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**Ray Baum**  
 Commissioner

  
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**John Savage**  
 Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

This Multi-State Settlement Agreement ("Settlement Agreement") is entered into between Qwest Corporation ("Qwest") and Covad Communications Company and DIECA Communications, Inc. (collectively "Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom, Inc. ("TDSM"), and XO Communications Services, Inc. ("XO"). Qwest and each CLEC are referred to separately as a "Party" or collectively as the "Parties."

**I. INTRODUCTION**

WHEREAS, the Federal Communications Commission ("FCC") issued its Report and Order, *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; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) ("TRO"); and, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March 11, 2005)(Triennial Review Remand Order) (FCC 04-290) ("TRRO");

WHEREAS, on February 15, 2006, some or all of the Joint CLECs filed requests with the state Commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state Commissions, in accordance with the TRRO, develop and approve a list of Non-Impaired Wire Centers and a process for future updates of the wire center list;

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC)



investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition.

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues, and bind all CLECs.

WHEREAS, the Joint CLECs and Qwest have reached resolution of their disputes. Because of the multi-state nature of these issues, the Parties have determined that it is in their mutual interest to effect a multi-state settlement of issues.

THEREFORE, the Parties agree to the following resolution of issues:

## II. DEFINITIONS

"Commission" for Arizona means the Arizona Corporation Commission or any successor state agency.

"Commission" for Colorado means the Colorado Public Utilities Commission or any successor state agency.

"Commission" for Minnesota means the Minnesota Public Utilities Commission or any successor state agency.

"Commission" for Oregon means the Public Utility Commission of Oregon or any successor state agency.

"Commission" for Utah means the Utah Public Service Commission or any successor state agency.

"Commission" for Washington means the Washington Utilities and Transportation Commission or any successor state agency.

"Commission-Approved Wire Center List" is Attachment A to this Settlement Agreement, as

may be updated by the Commission, as described in Section V of this Settlement Agreement.

“Effective Date of this Settlement Agreement” is the effective date of the Commission order approving this Settlement Agreement.

“Effective Date of Non-Impairment Designation” is the date on which the non-impairment designation begins as specified in this Settlement Agreement at Section III(B) for the Initial Commission-Approved Wire Center List and as later determined pursuant to Section VI (F) for future non-impairment designations identified in a Commission-Approved Wire Center List.

“Filing Date” is the date on which Qwest submits its non-impairment or tier designation filing, with supporting data, as described in Section VI of this Settlement Agreement, to the Commission for review and provides the Commission and CLECs that, as of that date, have signed the applicable protective order/agreement (or are subject to a standing protective order). If Qwest provides the data to the Commission and Joint CLECs on different dates, the Filing Date shall be the later of the two dates.

“Initial Commission-Approved Wire Center List” is Attachment A to this Settlement Agreement as of the Effective Date of this Settlement Agreement.

“Joint CLECs” refers collectively to Covad Communications Company (“Covad”), Eschelon Telecom, Inc. (“Eschelon”), Integra Telecom Holdings, Inc. (“Integra”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), Onvoy, POPP.Com (“POPP”), US Link, Inc. d/b/a TDS Metrocom (“TDSM”), and XO Communications Services, Inc. (“XO”).

“Non-Impaired Facilities” are those network elements identified in an applicable FCC order as no longer available as unbundled network elements (“UNEs”) under 47 U.S.C. § 251(c)(3) based on non-impairment or tier designations and that have been reviewed and approved by a Commission using the process and methodology set forth in Section IV of this Settlement Agreement.

“Non-Impaired Wire Center” is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

"Parties" refers collectively to Qwest Corporation and the Joint CLÉCs.

"Qwest" refers to "Qwest Corporation."

"Wire Center" For purposes of this Settlement Agreement, a Wire Center is the location of a Qwest local switching facility containing one or more Central Offices as defined in the Appendix to part 36 of chapter 1 of Title 47 of the Code of Federal Regulations. The Wire Center boundaries define the area in which all customers served by a given Wire Center are located.

### III. INITIAL COMMISSION-APPROVED WIRE CENTER LIST

Notwithstanding anything that may be to the contrary in the Definitions set forth in Section I and the Methodology set forth in Section V of this Settlement Agreement, the Parties agree the Qwest Wire Centers listed in Attachment A qualify as Non-Impaired Wire Centers at the tier levels and for the facilities noted on Attachment A.

For Wire Centers identified in Attachment A, the Parties agree as follows:

- A. The Joint CLÉCs agree that, upon the Effective Date of this Settlement Agreement, they will not order Non-Impaired Facilities identified in the Initial Commission-Approved Wire Center List. An order approving this Settlement Agreement is, and will also be recognized by the Parties as, an order approving the non-impairment or tier designations identified in the Initial Commission-Approved Wire Center List.
- B. The Effective Date of Non-Impairment Designations contained in the Initial Commission-Approved Wire Center List is March 11, 2005, with the following exceptions:
  1. **July 8, 2005:** The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.
  2. **Thirty (30) Days After the Effective Date of this Settlement Agreement:** The Effective Date of Non-Impairment Designations for the

Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of this Settlement Agreement.

**IV. NON-RECURRING CHARGE FOR CONVERSIONS USING THE INITIAL WIRE CENTER LIST AND FOR FUTURE COMMISSION-APPROVED ADDITIONS TO THAT LIST**

- A. Qwest will, for at least three (3) years from the Effective Date of this Settlement Agreement, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service or product under this Settlement Agreement. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.
- B. For purposes of settlement, Qwest will provide a clearly identified lump-sum credit of \$25 per converted facility to those CLECs that have (1) converted Non-Impaired Facilities to a Qwest alternative service before the Effective Date of this Settlement Agreement pursuant to the TRRO and (2) paid a \$50 non-recurring conversion charge. In the event a CLEC has, prior to the Effective Date of this Settlement Agreement, disconnected a converted circuit and, as a result that circuit is no longer in service as of the Effective Date of this Settlement Agreement, Qwest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

- C. The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of this Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Settlement Agreement precludes a Party from addressing the non-recurring charge after three years from the Effective Date of this Settlement Agreement. A different non-recurring charge will apply only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties.

## V. METHODOLOGY

Non-Impaired Facilities, non-impairment or tier designations will be determined using the following methodology:

- A. Business Lines – Business lines shall be counted as follows:
1. Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-wire center adjustments to this data and without including the same lines in more than one of the categories listed in paragraphs (2) – (4) of this Section V(A).
  2. UNE loops connected to a Wire Center where DS1 & DS3 unbundled loops and DS1 & DS3 Enhanced Extended Loops (“EEL”) are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will counted as 672 business lines).
  3. Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.

4. Qwest Platform Plus ("QPP"), Qwest Local Services Platform ("QLSP"), and other similar platform product offerings shall be calculated using actual business line counts for these services.

B. Collocation –

1. A fiber-based collocator is defined as any carrier, unaffiliated with the incumbent LEC (Qwest), that maintains a collocation arrangement in an incumbent LEC (Qwest) Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that:
  - a. terminates at a collocation arrangement within the Wire Center;
  - b. leaves the incumbent LEC's (Qwest's) Wire Center premises; and
  - c. is owned by a party other than the incumbent LEC (Qwest) or any affiliate of the incumbent LEC (Qwest), except as set forth in this definition. Dark fiber obtained from an incumbent LEC (Qwest) on an indefeasible right of use basis shall be treated as non-incumbent LEC (non-Qwest) fiber-optic cable. Two or more affiliated fiber-based collocators in a single Wire Center shall collectively be counted as a single fiber-based collocator. For the purposes of this definition, "affiliate" is defined by 47 U.S.C. §153(1) and any relevant interpretation in that title.
2. Before classifying a carrier as a fiber-based collocator in a Qwest filing request pursuant to Section VI for Commission approval of a non-impaired designation, Qwest will:
  - a. Confirm that the carrier meets the criteria contained in the definition of fiber-based collocator in 47 C.F.R. § 51.5 (as reflected in paragraph B(1) and subparts above);
  - b. Conduct a field visit to verify and document the above (2.a.) criteria; and

- c. Validate the criteria against the most recent order and/or billing data.
3. Express fiber will be counted as a functional fiber facility for purposes of identifying a fiber-based collocator, if it meets the definition of fiber-based collocator in 47 C.F.R. §51.5 (as reflected in paragraph B(1) and subparts above). The Joint CLECs agree not to raise the lack of Qwest-provided power when there is traffic over the express fiber as the sole basis to dispute whether express fiber can be counted as a functional fiber facility for purposes of identifying a fiber-based collocator. For the purpose of this Settlement Agreement, "express fiber" means a CLEC-owned fiber placed to the collocation by Qwest that terminates at CLEC-owned equipment in a collocation and draws power from a remote location.
4. Before filing a request pursuant to Section VI for Commission approval of a non-impairment designation, Qwest will send a letter by certified U.S. mail, return receipt requested, to CLECs identified by Qwest as fiber-based collocators, using the contacts identified by each such CLEC for interconnection agreement notices, and inform them that they will be counted by Qwest as fiber-based collocators in Qwest's filing. The CLEC will have a reasonable opportunity (which Qwest will identify in its letter but which will be no less than ten (10) business days from the CLEC's confirmed receipt of Qwest's letter) to provide feedback to this information before Qwest files its request. In the absence of a response by the Qwest-identified collocators, Qwest may rely on the Qwest-identified collocators in its filing. No party shall use the absence of a response from a CLEC collocator as the sole basis for its position.

**VI. FUTURE QWEST FILINGS TO REQUEST COMMISSION APPROVAL OF NON-IMPAIRMENT DESIGNATIONS AND ADDITIONS TO THE COMMISSION-APPROVED WIRE CENTER LIST**

- A. Qwest may file a request(s) with the Commission to obtain additional Non-Impaired Wire Centers as data supporting such designations become available,

subject to the following conditions:

1. Qwest may request addition of Non-Impaired Wire Centers to the Commission-Approved Wire Center List at any time based solely the number of fiber-based collocators.
  2. Qwest may request addition of Non-Impaired Wire Centers based in whole or part upon line counts at any time up to July 1 of each year, based on prior year line count data.
  3. Notwithstanding the above, Qwest will not request addition of any Non-Impaired Wire Centers until after the 2007 ARMIS filing (using December 2006 line count data).
- B. When requesting additional non-impairment designations, Qwest will use the methodology set forth in Section V above, and will use the most recent data available at the time Qwest submits its proposed non-impairment designations for Commission review. For business line counts, Qwest will use and submit the most recent filed ARMIS (as reported) data available at the time of submission of its request to the Commission.
- C. At least five (5) days prior to filing new non-impairment or tier designations for Commission review, Qwest will request a protective order from the Commission to govern the handling of confidential information during the proceedings. Attached as Attachment E to this Settlement Agreement, is a model protective order. The Parties agree to seek from the individual Commission's approval for a standing protective order based upon the attached model protective order that will apply in future proceedings. Where a Commission adopts a standing protective order, Qwest is not required to submit a request for a new protective order, and CLECs that have signed the protective order are not required to re-sign it for each new Qwest request. A Commission may modify a standing protective order using its standard processes and procedures after Qwest has made its filing.
- D. In order to provide all interested parties adequate notice of the scope of the requested protective order and the anticipated Wire Center update proceeding, Qwest will provide CLECs (Joint CLECs and other potentially affected



Competitive Local Exchange Carriers), including at least the contacts identified by each such carrier for interconnection agreement notices, via its email notification channels, with at least five (5) business days notice prior to filing proposed non-impairment or tier designations for Commission review.

E. Qwest will file supporting data (as outlined below) with the Commission when filing its request to obtain additional non-impairment designations. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective order to CLECs that have signed the applicable protective agreement (or are subject to a standing protective order).

1. If Qwest relies upon Fiber-Based Collocators for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

- a. The name of each fiber-based collocator.
- b. The applicable Qwest Ready for Service date.
- c. The results of any field verification that Qwest undertook to verify the fiber-based collocation, including the field technicians' notes which includes:  
(1) the Wire Center and state; (2) collocator name; (3) collocation type; (4) fiber type; (5) validation of fiber termination at the fiber-based collocation; (6) validation that fiber exits a Wire Center premises; (7) visual power verification; (8) power verification at Battery Distribution Fuse Bay/Board ("BDFB,") if possible; (9) additional comments from field personnel.
- d. A copy of the letter sent by Qwest to collocator(s) identified by Qwest as fiber-based collocator(s) requesting validation of status as a fiber-based collocator and ownership/responsibility.
- e. Copies of any responses to the letter noted in 1(d) above, including an indication of whether the collocator has affirmatively identified (or disputed) itself as a fiber-based collocator; and
- f. All written correspondence between Qwest and the collocator(s) identified by Qwest as fiber-based collocator(s) regarding the validation of the fiber-

based collocation.

2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

a. The latest available ARMIS 43-08 line counts, using the methodology described in Section V(A) of this Agreement and used to create official ARMIS data on file with the FCC.

b. Total wholesale UNE loops shown at the aggregated level for the Wire Center(s) at issue, and by capacity (voice grade, DS1, DS3). This information will also be provided on a disaggregated basis for all CLECs with the CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data. Qwest calculations to derive 64-kbps equivalents for high capacity (e.g., DS1 and DS3) loops will also be provided.

c. CLEC line counts based upon QPP or Qwest Local Services Platform (or similar platform product) will be provided on a disaggregated basis for all CLECs with CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data.

F. Once Qwest submits its new non-impairment or tier designation filing to request Commission approval, including all of the information identified in Section VI(E) above:

1. A CLEC or any other party will have 30 days from the Filing Date to raise objections to Qwest's request with the Commission.
2. If no objections are filed with the Commission, the Effective Date of the Non-Impairment Designation will be thirty (30) days after the Filing Date, unless the Commission orders otherwise ("Effective Date for Undisputed Designations"). The Parties agree that they will request that the Commission not alter the Effective Date for Undisputed Designations without good cause. If no objections are filed with the Commission, the

Joint CLECs agree that they will not order Non-Impaired Facilities in the Wire Center(s) identified on the applicable Commission-Approved Wire Center List as of fifteen (15) days from the Effective Date of the Non-Impairment Designation.

- a. In the event no objections to Qwest filing are filed with the Commission, the Parties agree that they will, within thirty (30) days of the Effective Date of the Non-Impairment Designations, jointly request an expedited order designating as non-impaired the facilities identified in the Qwest filing, if no order has been received.
  - b. To facilitate the expedited order described in the previous paragraph, the Parties further agree that they will, within thirty (30) days of the Effective Date of Non-Impairment Designations, include a mutually agreed to proposed order designating as non-impaired the facilities identified by Qwest in its filing on the Filing Date as an attachment to the joint request for an expedited order, if no order has been received.
3. If a CLEC or any other party disputes Qwest's proposed non-impairment designations, the Parties agree to ask the Commission to use its best efforts to resolve such dispute within 60 days of the date of the objection.
- a. In the event no objections are filed with respect to some but not all of the non-impairment designations identified by Qwest in a request on the Filing Date, the Parties agree that they will jointly request an expedited order approving the undisputed designations identified in the Qwest filing on the Filing Date, using the process noted in paragraphs 2(a) and 2(b) above.
4. If a CLEC or any other party disputes Qwest's proposed non-impairment designation but Qwest prevails and the Wire Center is added to the Commission-Approved Wire Center List, the Joint CLECs agree they will not order Non-Impaired Facilities in (for loops) and between (for transport) Wire Centers identified on the applicable Commission-

Approved Wire Center List as of fifteen (15) days after the effective date of the Commission order adding it to the Commission-Approved Wire Center List.

5. If a CLEC or any other party disputes Qwest's proposed non-impairment designation and prevails, and it is not added to the Commission-Approved Wire Center List, DS1 and DS3 UNE loop or high capacity transport UNE facilities in (for loops) and between (for transport) such Wire Centers will continue to be treated as UNEs until those facilities are added to a Commission-Approved Wire Center List in a future filing.

G. Length of Transition Period for Additional Non-Impairment Designations.

1. When the Commission approves additional DS1 and DS3 UNE loop or high capacity transport UNE non-impairment designations as described in this Section VI, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service pursuant to the terms of the applicable interconnection agreement.
2. When the Commission approves additional Dark Fiber transport non-impairment Designations as described in this Section VI, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities, pursuant to the terms of the applicable interconnection agreement to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such a change.

H. Rate During Transition Period for Additional Non-Impairment Designations

1. During the Transition Periods identified in Section VI (G), facilities subject to the transition will be provided at a rate equal to 115% of the UNE rates applicable as of the applicable effective date. The 115% transitional rate for additional Non-Impaired Facilities will be applied to

CLEC bills as a manual adjustment on the following bill cycle. The bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date as of the applicable effective date.

2. The non-recurring conversion charge is addressed in Section IV.

## VII. OTHER PROVISIONS

A. This Settlement Agreement is the entire agreement between the Parties regarding resolution of the underlying dispute and this Settlement Agreement may be modified only if agreed to in writing, signed by the Parties and approved by the Commission. This Settlement Agreement is not intended to alter or amend the existing interconnection agreements between Qwest and Joint CLECs. To the extent that any term of this Settlement Agreement would affect interconnection agreement terms, interconnection agreement terms will not be dealt with in the Settlement Agreement but will instead be included in filed and approved interconnection agreements or amendments as described in subparagraphs 1-3 of this Section VII(A):

1. Attachments B, C, and D to this Settlement Agreement contain interconnection agreement ("ICA") provisions regarding issues addressed in this Settlement Agreement. The CLECs that are part of the Joint CLECs are at varying stages of ICA negotiations with Qwest. Qwest and the Joint CLECs agree that the ICA language will be addressed as follows:
  - a. Covad, Integra, POPP.Com, and XO have each executed TRRO ICA amendments with Qwest. Qwest, Covad, Integra, POPP.Com and XO agree to amend their interconnection agreements with Qwest using the amendment terms in Attachment B.
  - b. Eschelon and Qwest have executed a Bridge Agreement and are currently parties to ICA arbitrations. Qwest and Eschelon agree that, in each arbitration, the language in Attachment C will be added as closed (*i.e.*, agreed upon) language to the interconnection

agreement that is submitted in the compliance filing for Commission approval in each state. Inserting this language will not re-open or modify any closed language in the proposed interconnection agreement. Eschelon agrees to add the closed language reflected in Attachment C to the negotiations multi-state interconnection agreement negotiations draft within ten (10) business days of the Effective Date of this Settlement Agreement.

- c. McLeodUSA and TDSM have not agreed to or executed TRRO Amendments to their current ICAs and are in negotiations with Qwest pursuant to Section 252 of the federal Act. The timeframes of Section 252 apply to those interconnection agreement negotiations. Qwest, McLeodUSA and TDSM agree to execute an amendment to their existing ICAs to include the amendment terms in Attachment D. Qwest, McLeodUSA and TDSM reserve their rights as to TRRO and ICA terms not set forth in Attachment D including terms with respect to the rates, terms and backbilling for the time period from March 10, 2006 to the time McLeodUSA and TDSM convert their existing base of Non-Impaired Facilities as well as the consequences for any non-conversion (or "Failure to Convert") after the end of a transition period.
2. Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
  3. McLeodUSA and TDSM agree to execute the ICA terms in Attachment D within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
  4. Qwest agrees to make the terms in Exhibits B, C, and D available to other

requesting CLECs for inclusion of one or the other in their interconnection agreements, consistent with Section 252(i) of the Act, as well.

- B. This Settlement Agreement is a settlement of a controversy. No precedent is established by this Settlement Agreement, whether or not approved by Commissions. The Settlement Agreement is made only for settlement purposes and does not represent the position that any Party would take if this matter is not resolved by agreement. This Settlement Agreement may not be used as evidence or for impeachment in any future proceeding before a Commission or any other administrative or judicial body, except for future enforcement of the terms of this Settlement Agreement after approval.
- C. If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement as to that particular state.
- D. Qwest has entered into ICA Amendments (*See, e.g.*, Section 2.6 of the Qwest-Covad TRRO Amendment; Section 2.8.5 of the Qwest-Integra TRRO Amendment, and Section 2.9.4 of the Qwest-XO TRRO Amendment.) under which Qwest has agreed that facilities previously converted to (or ordered as) non-UNEs based on initial Qwest non-impairment designations will be converted back to UNEs at no charge with corresponding refunds to the CLECs for non-recurring charges and the difference between the applicable non-UNE and UNE recurring rates after a determination that the relevant Wire Center did not meet the FCC's non-impairment criteria. Qwest agrees herein that these provisions and all the conversion and refund terms therein will apply to any of the relevant Joint CLEC's facilities previously designated by Qwest as non-impaired, but not identified as non-impaired in Attachment A to this Settlement Agreement. For any refunds that are due and owing pursuant to such provisions as of the Effective Date of this Settlement Agreement, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of this Settlement Agreement.
- E. For those non-impairment designations that have an effective date of July 8, 2005 under this Settlement Agreement, CLECs that have already been back-billed to March 11, 2005 for those facilities shall receive from Qwest a lump sum credit equal to the amount back-billed

specifically for the period from March 11, 2005 to July 8, 2005.



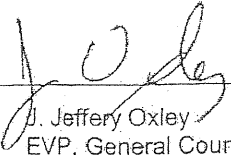
MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 20th day of June, 2007.

Qwest Corporation

By: Perry W. Hooks, Jr.  
Perry W. Hooks, Jr.  
Director - Product & Marketing  
1801 California Street, Suite 2150  
Denver, CO 80202

Eschelon

By: 

J. Jeffery Oxley  
EVP, General Counsel, Secretary  
Eschelon Telecom, Inc.  
730 Second Avenue S., Suite 900  
Minneapolis, MN 55402

MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 13<sup>th</sup> day of June, 2007.

McLeodUSA Telecommunications Services, Inc.



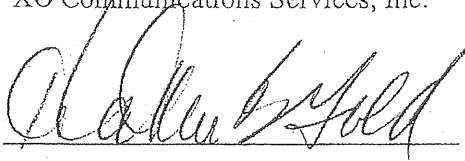
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William A. Haas  
Vice President & Deputy General Counsel  
1 Martha's Way  
Hiawatha, Iowa 52233  
(319) 790-7295

MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 14<sup>th</sup> day of June, 2007.

XO Communications Services, Inc.

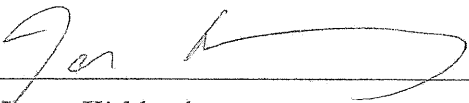
A handwritten signature in cursive script, appearing to read "Heather B. Gold", is written over a horizontal line.

Heather B. Gold  
SVP – External Affairs

MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 22<sup>nd</sup> day of June, 2007.

Covad Communications Company and  
DIECA Communications, Inc.



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By: James Kirkland

Its: Executive Vice-President, Strategic Development  
and General Counsel

MULTI-STATE  
SETTLEMENT AGREEMENT REGARDING  
WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 22ND day of June, 2007.

Integra Telecom Holdings, Inc.

By: 

Charles L. Best  
Vice President of Government Affairs  
1201 NE Lloyd Blvd., Ste. 500  
Portland, OR 97232