

I. PURPOSE

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

II. RECITALS

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

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

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

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

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

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

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

III. TERMS

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



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

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

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

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

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

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

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

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

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

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

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

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



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

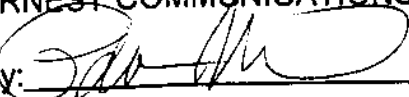
N. Assignment. Each Party represents and warrants that the Party owns the claims released herein by that Party and it has not sold, assigned, or otherwise transferred such claims, or any interest in them.

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

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

DATE: 9/14/01

ERNEST COMMUNICATIONS, INC.

By:  Paul Masters

Its: President

DATE: 9/17/01

QWEST CORPORATION

By: 

Its: SUP Wholesale MKB

