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February 22, 2005

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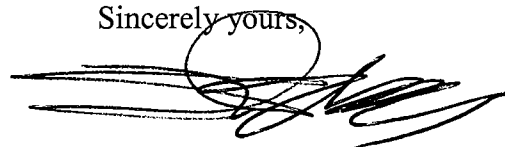
Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: WUTC Docket No. UT-043045

Dear Ms. Washburn:

Enclosed please find the original and two copies of DIECA Communications, Inc. d/b/a Covad Communications Company's Petition for Reconsideration in this matter. An electronic copy was also filed on February 22, 2005.

Sincerely yours,



Andrew R. Newell
Counsel for Covad
Communications Company

ARN/jk

Enclosures

cc: Service List

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**IN THE MATTER OF THE PETITION)
OF DIECA COMMUNICATIONS, INC.,)
D/B/A COVAD COMMUNICATIONS) WUTC Docket No. UT-043045
COMPANY FOR ARBITRATION TO)
RESOLVE ISSUES RELATING TO AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)**

**DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS
COMPANY' S PETITION FOR RECONSIDERATION**

INTRODUCTION

1 DIECA Communications, Inc., d/b/a Covad Communications Company (“Covad”), pursuant to RCW 34.05.470 and WAC 480-07-850, respectfully petitions the Washington Utilities and Transportation Commission (“Commission”) for reconsideration of Order No. 6 in this Docket, the Commission’ s Final Order, dated February 9th, 2005 (“Order No. 6”).

2 Covad specifically requests reconsideration of the Commission’ s decision regarding section 9.21.2 of the interconnection agreement at issue.¹ The Commission ordered the adoption of Qwest’ s proposed language, which would eliminate line splitting from the parties’ agreement. While Covad would have preferred the adoption of its broader legal arguments regarding the Commission’ s authority to unbundle network elements under section 271 of the Act and state law, its petition for reconsideration with respect to line splitting does not raise these broader issues. Instead, Covad merely points out that the Commission’ s decision, if upheld, is inconsistent with existing commercial arrangements for Qwest switching and line splitting, and would lead to anticompetitive results, even if one were to accept the Commission’ s decision to decline to use its authority to order additional unbundling.

¹ A copy of this section of the agreement is attached as Exhibit 1.

ARGUMENT

I. QWEST ITSELF HAS CONFIRMED THAT LINE SPLITTING ELEMENTS ARE AN APPROPRIATE SUBJECT OF INTERCONNECTION AGREEMENTS

3 Covad's concern with the elimination of the data elements of line splitting, accomplished by the adoption of Qwest's proposed language for section 9.21.2 of the agreement, results from the fact that Qwest itself appears to contemplate the inclusion of these elements in interconnection agreements. In its proposed commercial agreements for its switching product, labeled Qwest Platform Plus (QPP), Qwest confirms that purchasers of its commercial switching product may combine the product with digital loops in order to provide line splitting:

4 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 CLEC's ICAs as described below.

5 Service Exhibit 1 - Qwest Platform Plus Service ("QPP Agreement") at 1 (emphasis added).

A copy of this agreement has been attached hereto as Exhibit 2.

6 Qwest's QPP Agreement suggests that Qwest believes line splitting is a loop-based product that should be purchased not pursuant to a commercial agreement, but through ICAs. It has not, and does not intend to offer it as a commercial product. It does, however, contemplate that it may be combined with its QPP product, which includes only the switching and shared transport elements of local service, which are to be combined with loops purchased as unbundled network elements. In order to lend any meaning to Qwest's commitment to combine line splitting with its QPP product, it must therefore be available in ICAs.

7 Despite this, Qwest' s proposal for section 9.21.2, adopted by Order No. 6, reads:

8 On the effective date of a Commission determination that Qwest is no longer required to provide UNE-P Combination services in a market area, Line Splitting is also not available in that market area. To the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement. (emphasis added)

9 Covad believes this is an oversight, rather than a deliberate attempt on the part of Qwest to place CLECs in a catch-22 situation. It is likely that when Qwest proposed its language in its negotiations with Covad, it believed the ultimate QPP product would include loops, as well as transport and switching.² As it stands, the two agreements, the interconnection agreement at issue and Qwest' s QPP Agreement, make no sense when read together. On the one hand, the QPP Agreement clearly contemplates line splitting as a loop UNE, to be purchased from ICAs, while the ICA contemplates its availability as a commercial product, or not at all. The Commission should therefore order the parties to amend the agreement to provide for the purchase of line splitting elements needed to provide the data portions of line splitting.

² This would have been a somewhat logical assumption, given the fact that QPP' s predecessor, UNE-P, includes loop, transport and switching elements.

II. EXCLUSION OF LINE SPLITTING FROM THE PARTIES' AGREEMENT WILL LEAD TO UNINTENDED ANTICOMPETITIVE RESULTS

10 The clear intent of the FCC' s *TRO Remand Order*³ was to confirm that unbundled mass-market switching was no longer available as a UNE; it was not to grant Qwest a decisive operational advantage in the DSL market, and place it in a dominant position to partner with CLECs to whom it sells its commercial switching product. Qwest acknowledges as much in the language of its QPP Agreement, which intends to preserve the right of CLECs to partner with competitive DSL providers, such as Covad, in line splitting arrangements. If Covad is not permitted to order line splitting elements from Qwest, CLECs purchasing QPP, and their customers, will have no choice but to partner with Qwest for the provision of DSL.

11 This would have a clear negative effect on the competitive market for DSL in the state of Washington. While the switching portion of line splitting arrangements is clearly no longer a section 251 UNE, neither the *TRO Remand Order*, nor any of the decisions leading to that order, can be read to express a policy of closing the combined voice/broadband market to competition. The more appropriate reading of the *TRO Remand Order* is that unbundled switching alone was the target of the FCC' s revised non-impairment analysis, and that DSL providers should continue to have the ability to partner with voice CLECs, notwithstanding the fact that those voice CLECs purchase switching on a commercial basis from Qwest.

³ WC Docket No. 04-313; CC Docket No. 01-338, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand (Rel. February 4, 2005) (“ TRO Remand Order”).

III. THE INCLUSION OF THE ELEMENTS NEEDED TO PROVIDE THE DATA PORTION OF LINE SPLITTING DOES NOT RAISE THE PREEMPTION CONCERNS RAISED BY ORDER NO. 6

12 While Covad does not agree that the FCC has preempted this Commission in the manner discussed in Order No. 6, this Petition for Reconsideration does not raise these broader legal issues. Instead, it merely reflects the reality that there is an illogical gap between Qwest's QPP product, which does not include line splitting elements but nevertheless contemplates its availability, and the parties' current interconnection agreement. The Commission need only correct a "glitch" in the parties' agreement, and can do so without challenging the FCC's exclusive right to determine what may be unbundled pursuant to section 251 of the Act.

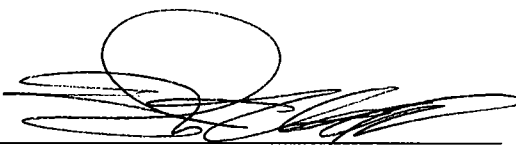
13 Failure to do so will result in these line splitting elements inhabiting a no-man's land, as neither a UNE nor a commercial product, despite Qwest's representations that it is available to CLECs purchasing QPP. It is merely an issue of fixing an inconsistency that may cause severe operational problems, not an action intended to frustrate the purpose of the Act.

CONCLUSION

14 For the reasons set forth above, Covad respectfully requests that the Commission reconsider its decision in Order No. 6 to adopt Qwest's language excluding the data elements of line splitting from the parties' agreement, and instead order language that preserves these elements as UNEs available under the parties' interconnection agreement.

15 Dated this 22nd day of February, 2005.

Respectfully submitted,

By: 

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Attorneys for DIECA Communications, Inc.
d/b/a Covad Communications Company

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **DIECA Communications, Inc. d/b/a Covad Communications Company's Petition for Reconsideration** was served via electronic service and/or deposited into the United States Postal system, postage prepaid, on the 22nd day of February, 2005, to the following:

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EXHIBIT 1

simultaneously with a new or existing UNE-P by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. A POTS Splitter must be inserted into the UNE-P to accommodate establishment of the advanced data service. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.21.2 Terms and Conditions

On the effective date of a Commission determination that Qwest is no longer required to provide UNE-P Combination services in a market area, Line Splitting is also not available in that market area. To the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.³⁴

9.21.2.1 General

9.21.2.1.1 The Customer of record will order the insertion of a POTS Splitter. Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.21.2.1.2 To order Line Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.21.2.1.3 CLEC/DLEC may provide any xDSL services that are compatible with CLEC UNE-P POTS service in accordance with ANSI T1.413 or IEEE 820 or other industry standards.

9.21.2.1.4 There may be only one DLEC at any given time that provides advanced data service on any given UNE-P.

9.21.2.1.5 The Customer of record will be able to request conditioning of the Unbundled Loop portion of the UNE-P. If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) shared Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. In order to meet the applicable standards or if

³⁴ Ordered by the Washington Commission in Docket No. UT-043045, Order No. 04, (¶ 55).

EXHIBIT 2

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

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

1.0 Qwest shall provide QPP™ service offerings according to the following terms and conditions. CLEC may use QPP™ services to provide any telecommunications services, information services, or both that CLEC 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 CLEC 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 Forwarding), 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 CLEC to combine the QPP™ services with a compatible 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 CLEC'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 CLEC'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 CLEC 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 CLEC'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.

1.3 Local Switching

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 CLEC 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 CLEC'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. CLEC 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 CLEC 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 CLEC'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 CLEC's QPP™ End User Customers, Qwest will load and update CLEC's QPP™ End User Customers' name information into the LIDB and ICNAM databases from CLEC'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. CLEC 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 CLEC'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 CLEC.

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

1.4.6 CLEC Branded Operator Services and Directory Assistance will be available to CLEC with QPP™ service and will be provided pursuant to the terms and conditions of CLEC'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 CLEC only if CLEC 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 CLEC traffic over Qwest's interoffice message trunk network.

1.5.1.1 Qwest does not authorize CLEC to offer Qwest the ILEC as a Local Primary Interexchange Carrier (LPIC) to its existing or new QPP™ End User Customers. Where CLEC assigns Qwest as LPIC 5123 to CLEC's existing or new QPP™ End User Customers, Qwest will bill CLEC 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 CLEC's QPP™ End User Customers, Qwest must establish its own Billing relationship with such QPP™ End User Customers. Qwest may not bill CLEC, and CLEC shall have no obligation to pay Qwest, for toll service Qwest provides to CLEC's QPP™ End User Customers. In addition, CLEC shall have no obligation to bill CLEC 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, CLEC QPP™ End User Customers. CLEC 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 CLEC for CLEC'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 CLEC's ICAs.

1.6.2 **QPP™ Centrex** is available to CLEC for CLEC's

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

business end users. QPP™ Centrex services include Centrex 21, 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 CLEC's ICAs.

1.6.2.1 CLEC 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 CLEC for CLEC'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 CLEC's ICAs.

1.6.4 QPP™ PAL is available to CLEC for CLEC'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 CLEC's ICAs.. QPP™ PAL may only be ordered for and provisioned to Payphone Service Providers (PSPs).

1.6.5 QPP™ PBX is available to CLEC for CLEC'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 CLEC'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 CLEC'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 CLEC's ICAs.

1.6.9 QPP™ Residential is available to CLEC for CLEC'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 CLEC'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 CLEC shall be able to convert all CLEC 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 CLEC 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 CLEC and Qwest. Nothing in this Agreement shall alter or affect CLEC's right to receive any applicable universal service subsidy or other similar payments.

2.3.1 Qwest shall provide to CLEC usage information within Qwest's control with respect to calls originated by or terminated to CLEC 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 CLEC with the Daily Usage Feed billing information.

2.3.2 Qwest shall provide CLEC with usage information necessary for CLEC 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 CLEC'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 CLEC chooses Qwest to provide IntraLATA Toll services for its QPP™ End User Customers, CLEC shall compensate Qwest for such services in accordance with the Rate Sheet.

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

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

SERVICE EXHIBIT 1 - QWEST PLATFORM PLUS™ SERVICE

- 2.5 Access to 911/E911 emergency services for CLEC's End User Customers shall be available pursuant to the terms and conditions of CLEC'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 CLEC 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. CLEC 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 CLEC 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 CLEC shall have the ability to combine the QPP™ service with a compatible 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 CLEC'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 CLEC's ICAs.
- 3.2 The loop element combined with a QPP™ service will be provided pursuant to CLEC'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 made on or after January 1, 2006 for a particular state under this section result in QPP™ Port Rate Increase of less than \$1.00, nor shall any upward adjustment made on or after January 1, 2006 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 CLEC's ICAs with Qwest. For purposes of this Agreement, the Port Rate Increases refer to the increases in the Port rate reflecting 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 on January 1, 2006 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 on January 1, 2006 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 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 number of CLEC's QPP™ lines in service as of October 31, 2005 equals or exceeds 150,000, CLEC 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 and 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 in service shall be calculated on a nationwide basis that includes all states in which this Agreement is in effect and, if necessary, the 150,000 threshold will be adjusted accordingly should QPP not be available as of October 1, 2005 in the same areas where QPP was available on the Effective Date of this Agreement.
- 3.4 CLEC shall be responsible for Billing its End User Customers served via QPP™ for all Miscellaneous Charges and surcharges required of CLEC by statute, regulation or otherwise required.
- 3.5 CLEC shall pay Qwest the PIC change charge associated with CLEC End User Customer changes of InterLATA or IntraLATA Carriers. Any change in CLEC's End User Customers' InterLATA or IntraLATA Carrier must be requested by CLEC on behalf of its End User Customer.
- 3.6 If an End User Customer is served by CLEC through a

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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 CLEC 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 CLEC End User Customer. The one month minimum service period is the period of time that CLEC is required to pay 100% of the monthly recurring price for the service even if CLEC 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, CLEC must identify residential end users by working telephone number (WTN) via LSR as described in the QPP™ PCAT. CLEC will be permitted to begin submitting such LSRs in accordance with the agreed-upon QPP Service Residential End User Identification Project Plan. 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 CLEC of such LSRs, CLEC and Qwest shall cooperate to ensure that appropriate updates are reflected in Qwest's billing systems. 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

3.9.1 To receive QPP™ Residential rates with an Effective Billing Date (EBD) of January 1, 2005, CLEC must identify their existing UNE-P residential end users by working telephone number (WTN) via LSR as described in the QPP™ PCAT by April 1, 2005. On April 1, 2005, Qwest will apply QPP™ Business rates, with an EBD of January 1, 2005, to all WTNs that were in service during this period. For those WTNs identified as residential end users on or before April 1, 2005, Qwest will process a one-time credit per WTN, per month for the period of time between January 1, 2005 and the later of (a) WTN installation date and (b) completion date of an order identifying the WTN as serving a residential end user. This one-time credit will be processed on one Billing Account Number (BAN) per state. After April 1, 2005, only WTNs identified as residential end users will be billed Residential rates (via the Residential End User Credit provided in the Rate Sheet), and CLEC shall waive any right to credits or discounts related to residential end users that were not so identified by such date.

3.9.2 **High Volume Performance Credit.** If, on January 1, 2005, the number of CLEC's QPP residential end user WTNs to be identified equals or exceeds 200,000, in consideration of the CLEC completion of the identification of such high volume of QPP residential end user WTNs via LSR by April 1, 2005, as described in 3.9.1 above, Qwest will provide an additional one-time high volume performance credit to CLEC in an amount equal to \$1.65 per residential end user WTN for each WTN in service under UNE-P with Qwest as of January 1, 2005. If more than a de minimis

number (i.e., one percent) of its residential user WTNs in service as of March 31, 2005 have not been identified by CLEC by April 1, 2005, and such failure was not caused by a negligent or willful act or omission of Qwest, CLEC shall be entitled to no incentive credit whatsoever. A WTN is identified for these purposes upon the submission of a complete LSR by the CLEC. For the elimination of doubt, Qwest operational support system (OSS) capacity limitations for entry of LSRs shall not be deemed a negligent intervening cause of CLEC's failure to identify its residential end user WTNs in a timely manner unless Qwest's OSS materially fails to allow CLEC to submit LSRs as set forth in the agreed-to project schedule described in Section 3.9 of this Agreement. This one-time performance credit will be processed on one Billing Account Number (BAN) per state. In any event, no credit shall be processed pursuant to this section for any residential end user WTNs identified after April 1, 2005 and the residential rates will be applied to these WTNs on a prospective basis only from the date of the identification.

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 CLEC 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, CLEC 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 CLEC, Qwest will render its closing bill to CLEC effective with the disconnection. Qwest will notify CLEC 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 CLEC or Qwest retail personnel with the name of the other service provider selected by the End User Customer.

4.5 CLEC shall provide Qwest and Qwest shall provide CLEC 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 CLEC, on a monthly basis, within seven to ten (7 – 10) calendar days of the last day of the most

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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 CLEC 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 CLEC 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 CLEC. CLEC 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 CLEC. Without limiting the generality of the foregoing, Qwest shall repair and restore any equipment or any other maintainable component that may adversely impact CLEC's use of QPP™ service. Qwest and CLEC 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"). CLEC proposed changes to QPP™ service 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.

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, (f) Trouble Rate, (g) New Service Quality, and (h) Repair Repeat Report Rate. Commercial measurement definitions, methodologies, performance targets and reporting requirements are attached as Attachment A. Qwest will provide CLEC with the raw data necessary to allow CLEC to disaggregate results at the state level.

7.3 CLEC 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 CLEC'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. In calculating the credit, Qwest shall use the state installation nonrecurring charge contained in this Agreement for that order type. 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, CLEC 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). In addition, Qwest will pay double payments on the third and all the subsequent repeat trouble reports that result in out of service conditions greater than 24 hours that occur within sixty (60) days of the first occurrence of the same trouble. The definition of an "out of service condition" and the associated exclusions are described in Attachment A.