

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made as of November 11, 2002 by and between Tel West Communications, L.L.C. ("Tel West") and Qwest Corporation ("Qwest"). As used herein, the terms "Tel West" and "Qwest" include any predecessors-in-interest, successors-in-interest, assigns, officers, directors, employees, attorneys, agents, consultants, subsidiaries and affiliates. Tel West and Qwest are referred to herein collectively as the "Parties" and/or individually as the "Party." The Agreement is intended by the Parties to resolve the specific controversies at issue between them in Washington Utilities and Transportation Commission ("Washington Commission") Docket No. UT-013097 (the "Litigation") and other matters and controversies, as described and set forth in the Agreement.

### RECITALS

A. The Parties are both telecommunications companies authorized to conduct business in the State of Washington and registered with the Washington Commission. Tel West is a competitive local exchange carrier/company primarily engaged in the business of reselling residential POTS services. Qwest is an incumbent local exchange company. Tel West resells Qwest's POTS service.

B. On or about September 10, 2001, the Parties entered into an Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunication Services (the "Washington ICA"). In 1998, the Parties entered into a resale agreement (the "Washington Resale Agreement"), the initial term of which expired on August 1, 2001. The Washington ICA and the Washington Resale Agreement are collectively referred to herein as the "Washington ICAs."

C. The Parties also have executed resale agreements in Idaho, Montana, Nebraska, New Mexico, Utah and Wyoming and interconnection agreements in Arizona and Oregon. The resale agreements and interconnection agreements referred to in this recital shall be collectively referred to herein as the "Other State ICAs."

D. On October 30, 2001, Tel West filed with the Washington Commission a Complaint and Petition for Enforcement commencing the Litigation. After retaining counsel, Tel West filed its First Amended Petition for Enforcement ("Complaint") on January 11, 2002. In the Complaint, Tel West sought enforcement of the Washington ICAs pursuant to the expedited dispute resolution process provided under WAC 480-09-530. Qwest answered the Complaint on January 18, 2002 and filed a First Amended Answer on February 8, 2002.

E. On January 31, 2002, the Washington Commission entered an order bifurcating the Litigation into two phases, referred to herein as "Part A" and "Part B." Part A involved consideration of Tel West's claims regarding (a) whether Qwest was violating the Washington ICA by combining access to Operator Services ("OS") and

Directory Assistance (“DA”) with the basic local exchange line Qwest provides Tel West for resale, and (b) whether Qwest was violating the Washington ICA in its handling of Tel West’s billing disputes. Part B was reserved for consideration of Tel West’s claims that Qwest, in violation of the Washington ICA, was failing to provide Tel West telecommunications services for resale that are at least equal in quality and in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries, its affiliates, other resellers, and Qwest’s retail end users.

F. After extensive discovery (including over one-hundred data requests, including subparts), pre-filed testimony from four witnesses, numerous discovery-related motions and pre-hearing briefing by the Parties, the Part A evidentiary hearing was conducted by ALJ Lawrence Berg on March 11 and March 12, 2002. Judge Berg issued a 43-page Part A Recommended Decision on April 25, 2002. On May 3, 2002, the Parties each sought administrative review of portions of the Recommended Decision. The Commissioners heard oral argument on the Parties’ requests for review on May 8, 2002. On May 23, 2002, the Washington Commission entered an order affirming in part and reversing in part the Recommended Decision. On June 3, 2002, Tel West filed a petition for reconsideration; Qwest answered that petition on June 18, 2002. Tel West’s petition for reconsideration was denied by a Washington Commission order dated July 2, 2002.

G. Part B was originally set for hearing to begin on May 6, 2002. Several continuances of the schedule were granted by the Washington Commission. Tel West submitted its Part B pre-filed testimony of two witnesses on April 15, 2002. The Parties engaged in extensive written discovery in Part B, again including well over one hundred data requests. Qwest also deposed one of Tel West’s witnesses and Tel West indicated its intention to depose Qwest’s witnesses. On June 11, 2002, Qwest filed the response testimony of six witnesses. That testimony, with exhibits, spans well over one thousand pages. The procedural schedule for Part B has been suspended to permit the Parties to engage in settlement discussions. Those discussions have led to this Agreement.

H. The Parties, each having expended extensive resources in prosecuting and defending the Litigation and concerned about the prospect of additional litigation or arbitration regarding ongoing billing dispute issues, desire to resolve their differences based upon the terms and conditions of this Agreement, and to modestly restructure their working relationship to minimize future disputes in the area of billing disputes. As to the latter objective, the parties have agreed to amend the Washington ICA and the Other State ICAs to provide for a billing dispute resolution mechanism to supplement existing contractual rights and remedies.

I. As of the date of this Agreement, Tel West had pending with Qwest aggregate billing disputes as identified in Confidential Exhibit A. For purposes of this Agreement, the billing disputes identified in Confidential Exhibit A, plus any additional disputes tendered by Tel West to Qwest on or before the Effective Date (as that term is

defined in section 4 below), shall be referred to herein collectively as the “Pending Billing Disputes.”

THEREFORE, based upon the promises and representations of the Parties, and in consideration of the benefits to be derived therefrom, including the avoidance of additional and future litigation, Qwest and Tel West hereby agree as follows:

### **AGREEMENT**

1. Payment to Tel West (Confidential). Within five business days after the Effective Date (see section 4 below), Qwest shall pay to Tel West a sum of money (the “Settlement Amount”) specified in Confidential Exhibit B. The Settlement Amount shall be tendered via wire transfer to the account of Miller Nash, LLP on behalf of Tel West Communications, LLC. Tel West explicitly authorizes Qwest to remit the Settlement Amount directly to Miller Nash, LLP. The Parties agree to hold the Settlement Amount confidential and not to disclose it to any third party for any purpose without the written consent of the other Party, unless compelled to do so by a court or agency of competent jurisdiction. The Parties agree that the Settlement Amount shall be subject to the Protective Order entered in the Litigation. The Parties desire for the Protective Order to remain in effect indefinitely, even after dismissal of the Litigation.

2. Amendment of the Washington ICA and the Other State ICAs. Contemporaneously with the execution of the Agreement, the Parties shall also execute a proposed amendment (“Amendment”) to the Washington ICA regarding the handling of Tel West’s billing disputes. The Amendment shall be identical in form and substance to that which is attached hereto as Non-Confidential Exhibit C. Contemporaneously with the filing the Agreement with the Washington Commission for approval, the Parties shall also file the Amendment with the Washington Commission for approval. The Parties shall also, on or before the tenth business day following the Effective Date (see section 4 below), execute and file with the appropriate state commissions amendments to each of the Other State ICAs identical in substance to the Amendment. The Amendment shall not constitute a waiver by the Parties of any other dispute resolution rights or remedies provided under the Washington ICA or the Other State ICAs or otherwise available.

3. Rejection or Partial Rejection of the Settlement. All aspects of this Agreement and the Amendment are contingent upon full approval of both by the Washington Commission. Should the Washington Commission reject the Agreement and/or the Amendment in their entirety, the Parties agree that there will be no settlement and the Litigation will proceed. Should the Washington Commission partially reject or in any respect modify the Agreement and/or the Amendment, the Parties agree that there will be no settlement, the Amendment will be withdrawn from the Washington Commission and will not be offered for the other state commissions’ consideration, and the Litigation will proceed unless both Parties agree in writing that the modified Agreement and Amendment are acceptable in their entirety.

4. Effective Date. This Agreement shall be effective upon service of an order by the Washington Commission approving the Agreement and the Amendment in their entirety. The date of service of such an order shall be the “Effective Date.”

5. Withdrawal of Pending Billing Disputes. On the Effective Date, Tel West will withdraw the Pending Billing Disputes. Such withdrawal shall be automatic upon this Agreement becoming effective and neither Tel West nor Qwest will be required to take further action in this regard. If Tel West so chooses, it may resubmit such disputes to Qwest after it has audited its records to ensure that it has complied with paragraphs 144, 145 and 169 of the Recommended Decision.

6. Dismissal of Litigation with Prejudice. The Litigation will be dismissed with prejudice as of the Effective Date. The Parties jointly request that the Washington Commission enter an order dismissing the Litigation with prejudice upon (and only upon) issuance by the Washington Commission of an order, if one is entered, approving the Agreement and the Amendment in their entirety. By requesting dismissal of the Litigation, the Parties are not seeking modification or withdrawal of the Washington Commission’s orders or findings pertaining to Part A of the Litigation.

7. Release by Tel West. The releases set out in this section and its subsections are provided to Qwest in consideration for Qwest's fulfillment of its promises and undertakings set forth in this Agreement. For purposes of this Agreement, the term “Claim” shall refer to any and all claims, actions, causes of action, theories of liability, suits, debts, demands, damages, judgments, executions, costs, expenses, liabilities, duties, amounts, accounts, reckonings, indemnities, covenants, contracts, controversies, agreements, promises, doings, offsets, debts, liens, omissions, losses, exposures and obligations of any kind whatsoever, whether known or unknown, whether in law or in equity, including any related interest expenses which may have accrued in connection therewith. The term “Claim” shall not include the right to payment, if any, arising under Qwest’s performance assurance plan, should one become effective as between the Parties.

(a) General Release of Existing Claims. As of the Effective Date, except as provided in subsection (c) below, this Agreement shall constitute a full and final settlement, satisfaction, and release by Tel West of all Claims which Tel West had against Qwest prior to or as of the Effective Date (“Existing Claims”).

(b) Limited Release of Future Claims. As of the Effective Date, and for a period of three (3) years from the Effective Date, this Agreement shall also constitute a full and final settlement, satisfaction, and release by Tel West of all future Claims against Qwest which relate to and are dependent upon facts and circumstances in existence as of the Effective Date (“Future Claims”). For purposes of this subsection, “facts and circumstances” excludes the existence and text of the Washington ICA, the Other State ICAs and state and federal law. The Future Claims being released by Tel West under this subsection include, by way of example, allegations that Qwest’s

operations support systems (“OSS”), when compared to Qwest’s retail systems and personnel, are discriminatory and constitute a violation of Section 6.2.3 of the Washington ICA unless Tel West can allege and prove that the discrepancy, if any, between Qwest’s OSS and retail systems and personnel is greater than the discrepancy, if any, as of the Effective Date. The Future Claims being released by Tel West shall not, however, include allegations that Qwest is discriminating against Tel West not directly related to Qwest’s OSS to the extent those allegations are supported solely by facts and circumstances arising subsequent to the Effective Date.

(c) Existing Claims Not Released by Tel West. The Existing Claims released by Tel West shall not include the following Claims against Qwest, if any:

(1) The Pending Billing Disputes.

(2) Any right of Tel West to participate in a class action lawsuit to the extent such a class action does not involve any Claim, fact, circumstance, or issue raised by Tel West in the Litigation.

(3) Any Claim solely concerning a service provided by Tel West to its business customers to the extent such claim does not involve any Claim, fact, circumstance, or issue raised by Tel West in the Litigation.

(4) Any Claim arising under Section 6.2.3.1 of the Washington ICA (relating to retail service quality credits) or arising under provisions, if any, of the Other State ICAs which are substantively equivalent to Section 6.2.3.1 of the Washington ICA.

8. Limited Release by Qwest. The release set out in this section is provided to Tel West in consideration of Tel West’s fulfillment of its promises and undertakings set forth in this Agreement. As of the Effective Date, this Agreement shall constitute a full and final release by Qwest of any and all Claims against Tel West arising solely out of the Litigation.

9. No Admission of Liability. By executing this Agreement, neither Tel West nor Qwest is making any admission of any wrongdoing or error on its part. Neither this Agreement nor any discussions or proceedings relating to the settlement of this dispute shall be considered, interpreted or construed as an admission or acknowledgement by either Party of the liability or fault on the part of any Party to this Agreement. The consideration being exchanged pursuant to this Agreement is being provided solely as a means of resolving ongoing and potential future disputes between the Parties and to improve the Parties’ ongoing business relationship.

10. No Waiver or Discount. Neither this Agreement nor the Parties’ undertakings thereunder constitute a waiver or discount off of tariffed or interconnection agreement rates or a waiver of any other terms of the Washington ICA or the Other State

ICAs.

11. Expenses and Attorneys' Fees. Each Party shall bear its own costs and attorneys fees in reference to the matters settled herein.

12. Headings; Interpretation. The subject headings of the sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions. The Agreement was specifically negotiated by the Parties, with the extensive assistance of counsel, and should not be construed for or against either Party. This Agreement is made in the State of Washington and is governed by the laws of this state.

13. Entire Agreement; Integration; Modification; Waiver. This Agreement constitutes and integrates the entire agreement and understanding between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, correspondence, communications, representations and understandings of the Parties. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Agreement may not be given without the written consent thereto of an authorized Qwest representative and an authorized Tel West representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

14. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Amendment may also be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Dispute Resolution. In the event of any dispute arising solely out of this Agreement, either Party may demand that the dispute be settled by arbitration. If either Party demands arbitration, the dispute shall be arbitrated under the then current rules of the American Arbitration Association ("AAA"), provided however that the arbitration shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry. The Federal Arbitration Act, not state law, shall govern arbitrability of the dispute. The arbitrator shall not have authority to award punitive damages. All expedited procedures described by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Seattle, Washington metropolitan area. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for any particular, some, or all dispute(s).

Should it become necessary to resort to court proceedings to enforce either Party's compliance with the dispute resolution process set forth in this section, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its enforcement shall be reimbursed by the non-complying Party to the requesting Party.

16. Successors and Assigns. The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates, subsidiaries and assigns of the Parties. In addition, the terms and conditions of this Agreement, including all facts leading up to the signing of this Agreement, shall bind the Parties, including contractors, subcontractors and retained professionals.

17. Assignment of Claims. Each Party hereby covenants and warrants that it has not assigned or transferred to any person any Claim, or portion of any Claim, which is released or discharged by this Agreement.

18. Representations, Warranties, and Covenants. Each Party represents, warrants and covenants that (a) it has and will have full and sufficient rights to perform its obligations under this Agreement, free and clear of any liens, claims and encumbrances, (b) it has obtained or will obtain any and all consents, approvals and/or other authorizations necessary for the performance of its obligations hereunder, (c) it has all requisite corporate power and authority to enter into, and fully perform pursuant to, this Agreement, (d) it will comply with all laws and applicable regulations of governing authorities relating to its performance under this Agreement and (e) except for regulatory approvals contemplated hereby, no authorizations or other consents, approvals or notices of or to any third party are required in connection with (i) the performance of its obligations under this Agreement, (ii) the validity and enforceability of this Agreement; or (iii) its execution, delivery and performance of this Agreement.

DATED as of the 11th day of November, 2002.

TEL WEST COMMUNICATIONS, LLC

QWEST CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Jeff Swickard

Its: President

Its: \_\_\_\_\_