

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UT-073035 (<i>Bifurcated</i>)
)	
QWEST CORPORATION,)	ORDER 05
)	
For Investigation Concerning the Status)	INITIAL ORDER ACCEPTING,
of Competition and Impact of the)	SUBJECT TO CONDITIONS,
FCC’s Triennial Review Remand Order)	MULTI-PARTY SETTLEMENT
on the Competitive)	REGARDING WIRE CENTER
Telecommunications Environment in)	DESIGNATIONS AND RELATED
Washington State)	ISSUES
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of the Order. If this Initial Order becomes final, the Commission will accept, subject to conditions, the multi-party Settlement Agreement regarding wire center designations and related issues. Acceptance of the Settlement would be conditioned on Qwest providing non-signatory CLECs with a copy of the Settlement and advising them of the opportunity to include the Settlement terms in their interconnection agreement. Further, the Initial Order requires that future petitions to designate wire centers as non-impaired include business line count calculations according to both the methodology in the Settlement and the methodology approved in Order 04 of Docket UT-053025.*¹

MEMORANDUM

I. Background and Procedural History.

2 On June 22, 2007, Qwest Corporation (Qwest) filed with the Washington Utilities and Transportation Commission (Commission) a request for approval of additional non-impaired wire centers. That request was assigned Docket UT-073033. On the same

¹ *In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC’s Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State.*

date, Qwest and several Competitive Local Exchange Carriers (Joint CLECs)² filed in Docket UT-053025 a joint petition for approval of a Settlement Agreement (Settlement) resolving issues concerning the status of competition and the impact of the Federal Communication Commission's (FCC) Triennial Review Remand Order (TRRO) on the competitive telecommunications market in Washington. That filing was subsequently withdrawn and refiled on June 29, 2007, as a new case, Docket UT-073035.

3 On June 28, 2007, Administrative Law Judge Ann Rendahl entered Order 01, Protective Order. On July 3, 2007, the parties filed a joint motion requesting that the protective order be modified. Order 02, Amended Protective Order was entered in Docket UT-073033 on July 5, 2007. On July 13, 2007, Eschelon filed a petition to intervene in Docket UT-073033. An Order of Consolidation and Notice of Prehearing Conference was entered on July 19, 2007.

4 On July 23, 2007, the Commission issued a Notice of Substitution of Presiding Officer reassigning this matter to Administrative Law Judge Patricia Clark. On the same date, Covad, McLeodUSA, Integra Telecom, and XO Communications, filed petitions to intervene in Docket UT-073033. On July 27, 2007, Eschelon filed a Motion for a Standing Protective Order Based on Model Order in Dockets UT-073033 and UT-073035.³ On July 30, 2007, Eschelon filed a corrected Motion for Standing Protective Order Based on Model Protective Order in both dockets.⁴

5 The Commission conducted a prehearing conference on July 31, 2007, before Administrative Law Judge Patricia Clark. In Order 04, Prehearing Conference Order, the Commission required the parties to submit a narrative in support of the Settlement in compliance with WAC 480-07-740(2)(a). The Commission also rendered moot the petitions to intervene because a prior order designated the known parties to these proceedings.⁵ In Order 04, the Commission also accepted the parties' proposal to

² The CLECs that are signatories to the Settlement are Covad Communications Company (Covad), McLeodUSA Telecommunications Services, Inc. (McLeod), Integra Telecom of Washington, Inc. (Integra), XO Communications Services, Inc. (XO Communications), and Eschelon Telecom, Inc (Eschelon). These CLECs are collectively referred to as the Joint Competitive Local Exchange Carriers or Joint CLECs.

³ The unopposed Motion for Standing Protective Order based on Model Protective Order was held in abeyance pending ruling on the merits of the Settlement.

⁴ See n. 3.

⁵ That Order was entered as Order 03 in Docket UT-073033 and as Order 01 in Docket UT-073035. That Order stated that the known parties to these proceedings are Qwest, Covad, Eschelon, McLeodUSA, Integra, and XO Communications. Accordingly, in Order 04, the petitions to intervene were rendered moot.

consider the issues in Dockets UT-073033 and UT-073035 in two phases. Specifically, the parties proposed that the Commission resolve the issues in Docket UT-073035 prior to considering the issues in Docket UT-073033. In Order 05, Order Bifurcating Dockets, the Commission concluded that no purpose would be served by considering these matters in a consolidated proceeding and bifurcated these matters for individual consideration.

- 6 On September 18, 2007, the Commission issued a Notice of Bench Requests regarding the process used and notice provided to CLECs who are not signatories to the Settlement and requesting the rationale for deviating from the precedent established in Docket UT-053025.
- 7 On December 18, 2007, the Commission issued additional Bench Requests regarding the business line counts for certain wire centers using the methodology established in Docket UT-053025 and resolution of any conflict between the two methodologies in filings with the FCC regarding non-impaired wire centers.
- 8 **Party Representatives:** Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest. Gregory J. Kopta, attorney, Davis Wright Tremaine, LLP, Seattle, Washington, represents Covad, McLeodUSA, Integra, and XO Communications. Karen Clauson, Associate General Counsel, Minneapolis, Minnesota, represents Eschelon.

II. Discussion and Decision

- 9 **Terms of the Settlement:** The parties concur that the Qwest wire centers, identified in Attachment A to the Settlement, qualify as non-impaired wire centers and the Joint CLECs agree to not order non-impaired facilities from these wire centers. The parties agree that a \$25 non-recurring charge will apply for a term of three years to conversions from unbundled network elements (UNEs) to alternative facilities in wire centers included on the initial wire center list and for future Commission approved additions to the list.
- 10 The parties concur that the methodology for counting business lines for the purpose of designating wire centers as non-impaired and the terms governing collocation should be modified. The Settlement also governs the methodology Qwest will employ in future filings to request Commission approval of non-impairment designations and additions to the Commission-approved wire center list Qwest agrees to make the

terms and conditions of the Settlement available to other requesting CLECs for inclusion in their interconnection agreements.

- 11 **Background:** The issues in the Settlement were first addressed by the FCC in its TRRO.⁶ In that Order, the FCC reexamined whether competitors were impaired without access to certain unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 (The Act). The FCC concluded that it would assess whether competitors were impaired without unbundled access to high-capacity loops and inter-office transport by reviewing the number of fiber-based collocators in a wire center and the number of business lines terminating and leaving a wire center as indicia of competition. The FCC developed three tiers to classify wire centers.⁷ The most competitive wire centers, Tier 1, have four or more fiber-based collocations and a minimum of 38,000 business lines. Tier 2 wire centers have three or more fiber-based collocations and a minimum of 24,000 business lines. Tier 3 wire centers are all wire centers not otherwise classified.
- 12 The FCC concluded that if a wire center meets the foregoing criteria, CLECs would not be impaired in providing telecommunications service without access to such network elements. Once a wire center meets the non-impairment criteria, it cannot later be reclassified to a lower tier or found to be impaired.
- 13 The issues in the Settlement were next addressed by this Commission when it initiated an investigation to determine whether to issue an interpretative statement regarding the TRRO and accompanying FCC rules regarding CLEC access to high capacity transport and loops in wire centers owned or controlled by ILECs.⁸ At the conclusion of its investigation, the Commission issued an interpretative statement and established the methodology for counting business lines, the terms governing collocation, and the effective date of any designations of wire centers as non-impaired.⁹ Finally, the Commission identified the Qwest wire centers in Washington that met the FCC's non-impairment criteria and designated the Tier level for most non-impaired wire centers.

⁶ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order of Remand, FCC 04-290 (rel. Feb. 4, 2005).

⁷ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket 04-313, CC Docket 01-338, Order on Remand, FCC 04-290 (rel. February 4, 2005). (*Triennial Review Remand Order or TRRO*).

⁸ See n. 1.

⁹ Orders 04 and 06 Interpretative Statement entered, in Docket UT-053025.

- 14 **Decision:** The Commission approves settlements when doing so is lawful, supported by an adequate record, and the result is consistent with the public interest.¹⁰ This Settlement raises concern about whether the result is consistent with the public interest.
- 15 The Settlement entered into between Qwest and the Joint CLECs alters some of the terms and conditions the Commission imposed in Order 04 in Docket UT-053025. Specifically, the methodology for counting business lines, the terms governing collocation, and the effective date of any designations of wire centers as non-impaired are not consistent with the decision reached in that Order. The settling parties bear the burden of demonstrating that such a new methodology is appropriate and in the public interest.
- 16 ***Applicability of Settlement Terms:*** The Settlement in this proceeding differs from settlements typically presented in adjudicative dockets. The Commission opens adjudicative proceedings when a public service company seeks relief in a matter over which the Commission has jurisdiction, such as a proposal to increase rates that requires Commission approval. In that instance, interested individuals have an opportunity to intervene and participate as parties in the proceeding. The Commission also initiates such proceedings when two or more parties have a controversy they are unable to resolve to their mutual satisfaction. In either of these types of adjudicative proceedings, the parties may resolve all disputed issues to their mutual satisfaction, enter into a settlement memorializing their agreement, and submit that settlement for Commission approval.
- 17 This proceeding is unique. The Commission did not have a pending adjudicative proceeding to address a dispute. This case was initiated with the submission of a settlement. The Settlement does not resolve disputes regarding issues of material fact in an ongoing controversy before the Commission but rather, creates a process for future designations of non-impaired wire centers. However, all CLECs that could be affected by modification of the process for designating wire centers as non-impaired are not signatories to the Settlement. Accordingly, the Commission issued a Bench Request No. 1 for further information regarding the method for notifying the non-participating CLECs of the opportunity to participate in negotiations regarding modification of the process for designating non-impaired wire centers.

¹⁰WAC 480-07-750.

- 18 Qwest's response indicates that the Joint CLECs approached Qwest to commence settlement negotiations addressing issues that were "open in multiple jurisdictions including Washington."¹¹ Qwest asserted that it was not aware of the contacts the Joint CLECs may have initiated with other CLECs who chose not to participate in wire center dockets including UT-053025.
- 19 The Joint CLECs comment that settlement negotiations commenced in Minnesota and it was unclear when the discussions extended to include Washington. The Joint CLECs dispute Qwest's suggestion that it was the Joint CLECs' obligation to contact other CLECs regarding settlement negotiations. They assert that Qwest wanted the process to bind other CLECs. Therefore, the Joint CLECs argued it was incumbent upon Qwest to contact the CLECs it wished to bind. In conclusion, the Joint CLECs assert that the Settlement binds only the parties but that other CLECs have the opportunity to opt into the terms and conditions of the Settlement.
- 20 The only other information regarding this topic is the portion of the Settlement that indicates that on March 3, 2006, Qwest "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**."¹² (Emphasis Supplied.)
- 21 It is unclear which proceeding Qwest references when it indicates that the Settlement addresses issues that were open in Washington. Docket UT-053025 was closed April 2, 2007.¹³ While the parties executed the Settlement on various dates, the earliest is approximately two and one-half months after Docket UT-053025 was closed. This proceeding was initiated with the filing of the Settlement on June 29, 2007.
- 22 Despite the statement in the Settlement that it is Qwest's intent to bind all CLECs, it appears that the parties now request that the Settlement be approved exclusively with respect to the entities who executed the document.¹⁴ It is important to specifically accept the Settlement as applicable only to the signatories to the document. Not only is that the relief now requested by the parties, but due process and the principles of fundamental fairness dictate that non-signatory CLECs not be bound by the terms and conditions of the Settlement. Bench Request No. 1 asked the parties to explain the

¹¹ Qwest Response to Bench Request 01.

¹² Settlement, p. 2, indicating that this petition was filed March 3, 2006.

¹³ Docket UT-053025, Order O8.

¹⁴ Joint CLECs response to Bench Request No. 1, filed October 2, 2007 and neither corrected nor opposed by Qwest.

process used and notice provided to CLECs of the opportunity to participate in the negotiations that led to the Settlement. In response, both Qwest and the Joint CLECs assert that the obligation to notify other CLECs that could be affected by modification of the methodology to designate wire centers as non-impaired lies with the opposing party. From these responses, it is apparent that non-signatory CLECs were not adequately notified of and given the opportunity to participate in settlement negotiations. Accordingly, other CLECs cannot be bound by the Settlement's terms and conditions.

- 23 ***Methodologies for Calculating Non-Impairment:*** The manner in which business lines and collocators are counted may determine the Tier classification a wire center receives and whether it is appropriately classified as a non-impaired wire center. In Order 04 entered in UT-053025, the Commission attempted to develop a methodology for counting business lines and verifying collocations that was consistent with the FCC's TRRO.¹⁵ As mentioned earlier, the methodology in the Settlement differs from that adopted by this Commission and certain of Qwest's wire centers would be designated as non-impaired according to calculations using the Settlement methodology.
- 24 As a practical matter, the Joint CLECs have agreed to not order facilities in any of the wire centers designated as non-impaired in the Attachment to the Settlement. However, other CLECs in Washington State are not bound by that agreement. Qwest appears to recognize the inherent difficulty in having one wire center designation for CLECs who are signatories to the Settlement and a separate designation for CLECs who are not. In its supplemental response to Bench Request No. 4, Qwest indicates that it anticipates calculating business lines using both methodologies and resolving any inconsistencies at the state level. Consistent with Qwest's intent and to expedite resolving any dispute regarding inconsistencies, acceptance of the Settlement is conditioned on Qwest's filing business line calculations using both methodologies in all petitions to designate additional wire centers as non-impaired.¹⁶
- 25 ***Notice to Non-Participating CLECs:*** In the interest of efficiency and judicial economy, Qwest should contact all non-signatory CLECs in Washington State with whom it has interconnection agreements (ICAs) and advise them of the opportunity to

¹⁵ Order 04 and Appendix 1, Interpretative Statement entered in UT-053025.

¹⁶ For example, the petition in Docket UT-073033, *In the Matter of the Petition of Qwest Corporation, For commission Approval of 2007 Additions to Non-Impaired Wire Center List*, should be supplemented by filing wire center counts using the methodology approved in Order 04, Docket UT-053025.

incorporate the Settlement terms into their ICAs,¹⁷ and that participation in the Settlement provisions is discretionary. A copy of this Order should be included with Qwest's notice to non-signatory CLECs. Use of a single methodology would diminish disputes regarding any inconsistencies between the two methodologies. Finally, the Settlement includes deadlines for CLECs and the Commission to perform certain tasks on an abbreviated basis, which may not be consistent with either the law or the public interest.

26 With the two foregoing conditions, the Settlement is consistent with the public interest and should be approved.

FINDINGS OF FACT

27 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings of fact and conclusions upon issues and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

28 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.

29 (2) Qwest Corporation is engaged in Washington State in the business of supplying telecommunications service for hire, sale, or resale to the general public for compensation.

30 (3) On June 29, 2007, Qwest Corporation, Covad Communications Company, McLeodUSA Telecommunications Services, Inc., Integra Telecom of Washington, Inc., XO Communications Services, Inc., and Eschelon Telecom, Inc., filed a multi-party Settlement Agreement.

31 (4) The terms of the multi-party Settlement Agreement attached to this Order as Appendix A and incorporated herein by this reference, are not consistent with the public interest unless modified.

¹⁷ Settlement, Section VII (A)(4) at 15-16.

CONCLUSIONS OF LAW

32 Having discussed above all matters material to this decision, and having stated
detailed findings, conclusions, and the reasons therefore, the Commission now makes
the following summary conclusions of law, incorporating by reference pertinent
portions of the preceding detailed conclusions:

- 33 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, this proceeding.
- 34 (2) Qwest Corporation is a “public service company” and a “telecommunications
company”, as those terms are defined in RCW 80.04.010 and as those terms
otherwise are used in Title 80 RCW.
- 35 (3) The multi-party Settlement Agreement, as conditioned by the Commission,
meets the standard in WAC 480-07-750 and should be accepted.
- 36 (4) The Commission should retain jurisdiction over the subject matter and the
parties to this proceeding to effectuate the terms of this Order. *Title 80 RCW.*

ORDER

THE COMMISSION ORDERS THAT:

- 37 (1) The multi-party Settlement Agreement filed by Qwest Corporation, Covad
Communications Company, McLeodUSA Telecommunications Services, Inc.,
Integra telecom of Washington, Inc., XO Communications services, Inc., and
Eschelon Telecom, Inc., attached as Appendix A and incorporated by prior
reference, is accepted subject to the conditions set forth in the body of this
Order.

Dated at Olympia, Washington, and effective March 21, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and nine copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

APPENDIX A

**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.”

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 CLECs.

“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 CLECs 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 collocater 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 collocater(s) identified by Qwest as fiber-based collocater(s) requesting validation of status as a fiber-based collocater and ownership/responsibility.

e. Copies of any responses to the letter noted in 1(d) above, including an indication of whether the collocater has affirmatively identified (or disputed) itself as a fiber-based collocater; and

f. All written correspondence between Qwest and the collocater(s) identified by Qwest as fiber-based collocater(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 _____ day of June, 2007.

Qwest Corporation

By: _____

Perry W. Hooks, Jr.
Director – Product & Marketing
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Denver, CO 80202