Docket No. UT-033011
Exhibit No. LBB-31
Date 09/13/2004

Qwest
1600 7th Avenue, Room 3206
Seattle, Washington 98191
(206) 398-2507
Facsimile (206) 343-4040

Adam L. Sherr
Attorney
Policy and Law Department

ride the light
Qwest

August 21, 2002

Ms. Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7254

Re: Docket No. UT-980396
Request for approval of negotiated agreement between Qwest Corporation and Ernest Communication, Inc.
Confidential Treatment Requested

Dear Ms. Washburn:

In accordance with the Interpretive and Policy Statement issued on June 28, 1996 in Docket No. UT-960269, please find enclosed three (3) copies of the negotiated Confidential Settlement Agreement and Release between Qwest and Ernest Communications, Inc. for filing with the Commission. Qwest seeks approval of the bracketed language in the enclosed agreement.

Qwest has previously submitted hundreds of agreements with CLECs in Washington for approval by the Commission under Section 252(e)(1). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252 of the Telecommunications Act of 1996.

As the Commission is aware, earlier this year questions were raised regarding Qwest's decisions about these other, unfiled agreements. Notably, a complaint was filed by the Minnesota Department of Commerce alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. The Commission addressed this issue in the 39th Supplemental Order in Docket Nos. UT-003022/003040, paragraphs 289-95. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission interconnection agreements and amendments, and is committed to full compliance with the Act. After this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 9, 2002. Under this policy Qwest is filing all new contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that this commitment goes well beyond the requirements of Section 252(a). For example, this policy reaches details of business-to-business carrier relations that Qwest does not think the Act requires to be filed with state commissions for approval. However, Qwest is committed to follow this standard until the FCC issues a decision on the appropriate standard in this area. (Unless requested by the Commission, Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.)

Older agreements provide a more complicated case. Qwest naturally has been concerned about any potential penalty liability with regard to "second-guessing" of its past filing decisions, especially in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of good faith. Specifically, Qwest has reviewed its currently effective agreements with CLECs in Washington that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. These agreements have previously been provided in response to the Commission Bench Request in Docket Nos. UT-003022/003040. Qwest has applied its broad new review standard to all such agreements and as a result is now filing those agreements for approval under Section 252 of the Act. The agreement attached to this letter for filing is one of those agreements.

Qwest asks the Commission to approve the attached agreement such that, to the extent any active provisions of such agreements relate to Section 251(b) or (c), they are formally available to other CLECs under Section 252(i). For ease of review, Qwest has bracketed those terms and provisions in the agreement which arguably relate to Section 251(b) or (c) services, and which have not otherwise been terminated or superseded by agreement or Commission order. Qwest will make the bracketed provisions available under Section 251(i).

As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling and call-related databases. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Upon the Commission's request, Qwest can provide examples of routine paperwork, order documents, or form contracts for its review.

Qwest realizes that its voluntary decision to submit the attached agreement does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith. In any event, Qwest's actions here should remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

Qwest requests that the Commission approve the bracketed portion of this agreement as soon as reasonably practicable. Qwest reserves its rights to demonstrate that the agreement need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any bracketed terms in effect for the benefit of the contracting CLEC pursuant to the polices and rules related to Section 251(i).

Qwest will also be posting the agreement on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Washington of the bracketed terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the bracketed provisions of the agreement filed here.

Given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

In addition, Qwest asks that this agreement be considered confidential pursuant to WAC 480-09-015 for a period of seven (7) days to allow the CLECs sufficient time to object to public disclosure. Qwest will notify the CLEC of this filing and advise it of its opportunity to submit any objections regarding public disclosure to the Commission within the seven-day period.

The enclosed agreement does not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues.

The Order on Arbitration Procedure also requests that a proposed order accompany the filing. Qwest requests a waiver of that requirement, and is not providing one with this filing, as the Commission has, in the past, used its own format for Orders. If this is not satisfactory to the Commission, please contact me and I will forward a proposed order immediately.

Sincerely,

Adam L. Sherr

ALS/llw
Enclosures
cc: Jeff Smock, Ernest Communications, Inc.

I. PURPOSE

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

II. RECITALS

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

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

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

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

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

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

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

III. TERMS

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

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

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

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

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

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

G. Confidentiality. The Parties and their respective attorneys and agents expressly agree that they will keep the substance of the negotiations and/or conditions of the settlement and the terms or substance of this Agreement strictly confidential, except to the extent that such disclosure is required by law or is necessary to enforce the Agreement. The Parties further agree that, unless compelled to do so by law, they will not communicate (either orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial, or administrative agency or body, business, entity, or association, or anyone else for any reason whatsoever, without the prior express written consent of the other Party. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties further agree that this Agreement and negotiations, and all disputes related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at both the state and federal level. Finally, in the event either Party has a legal obligation that requires disclosure of the terms and conditions of this Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope, and source of such obligations, so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement.

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

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

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

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

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

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

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

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

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

DATE: 9/14/01

ERNEST COMMUNICATIONS, INC.

By: [signature] - Paul Masters

Its: President

DATE: 9/17/01

QWEST CORPORATION

By: Audrey McKenney

Its: SVP Wholesale Mkts

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