

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation into Qwest Wire Center Data	Docket No. 06-049-40  JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND NARRATIVE SUPPORTING AGREEMENT
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Pursuant to Utah Code Ann. § 54-7-1, Covad Communications Company (“Covad”), Eschelon Telecom of Utah, Inc. (“Eschelon”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), Integra Telecom of Utah, Inc. (“Integra”) and XO Communications Services, Inc. (“XO”) (collectively, the “Joint CLECs”) and Qwest Corporation (“Qwest”) (collectively, the “Parties”) jointly file the Settlement Agreement (“Settlement”) that is attached and marked as Attachment 1 to this Joint Motion, and jointly request that this Commission approve the Settlement between Qwest and the Joint CLECs, and that such order approving the settlement supersede any previous Commission order to the extent any part of a previous order is inconsistent with the settlement.

**I. BACKGROUND**

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”).

On February 16, 2006, the Joint CLECs filed a request with the Commission asking that the Commission develop and approve both a list of Non-Impaired Wire Centers and a process for future updates of the wire center list for Qwest in Utah. The Commission opened this docket in response to the Joint CLECs' filings.<sup>1</sup> On March 1, 2006, Qwest responded to the Joint CLEC's request and also petitioned for Commission investigations and expedited proceedings 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. The Joint CLECs and Qwest have reached resolution of the disputed issues in this matter. The Parties have embodied that resolution in the Settlement, and seek Commission approval of the Settlement.<sup>2</sup>

## **II. SUMMARY OF SETTLEMENT**

The Settlement consists of seven sections and five attachments, as follows:

### **Settlement Section I: Introduction**

This section, consisting of six "whereas" clauses, describes the FCC's *TRO* and *TRRO* orders, the various petitions filed with various state commissions, the dockets that were opened by various state commissions, and reflects that the Parties have now reached a multi-state resolution of their disputes on the open issues.

### **Settlement Section II: Definitions**

This section provides the applicable definitions of key terms used in the settlement agreement, including the definitions of the various commissions and Parties.

### **Settlement Section III: Initial Commission-Approved Wire Center List**

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<sup>1</sup> Some or all of the Joint CLECs were parties to similar Joint CLEC filings at the state utility regulatory commissions in Arizona (Docket Nos. T-03632A-06-0091, T-03406A-06-0091, 03267A-06-0091, T-03432A-06-0091, T-04302A-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) and Oregon (docket UM 1251). 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.

<sup>2</sup> The Settlement provides for resolution of the same issues in each of the six state jurisdictions. As the wire center lists are unique to each state, Attachment A to the Settlement Agreement provides information by state.

This section states the Parties' agreement about which Qwest wire centers are the initial non-impaired wire centers, and the associated tier levels and effective dates.

**Settlement Section IV: Non-Recurring Charge for Conversions Using the Initial Wire Center List and for Future Commission-Approved Additions to that List**

This section reflects the Parties' agreement regarding the nonrecurring charge ("NRC") for conversions of unbundled network elements ("UNEs") to alternative services or products, including the agreed-upon NRC rate and length of term, as well as how credits for those CLECs which have already paid a higher NRC rate will apply, and the status of the rate after three years.

**Settlement Section V: Methodology**

This section reflects the methodology that the Parties agreed to, for purposes of non-impaired facilities, to determine non-impairment and/or tier designations, including how to count "business lines" and "fiber-based collocators."

**Settlement Section VI: Future Qwest Filings to Request Commission Approval of Non-Impairment Designations and Additions to the Commission-Approved Wire Center List**

This section summarizes the Parties' agreement regarding how Qwest can request Commission approval of non-impairment designations and additions to the Commission-approved non-impaired wire center list in the future (i.e., future additions to the initial Commission-approved list).

**Settlement Section VII: Other Provisions**

This section has a number of miscellaneous provisions based on the Parties' agreement regarding various issues, including interconnection agreement ("ICA") provisions and amendments, refunds related to Qwest identified non-impairment designations that are not identified as non-impaired in Attachment A to the Settlement Agreement, credits to CLECs that have been back-billed to March 11, 2005 for facilities with an effective non-impairment date of

July 8, 2005 (instead of March 11, 2005), as well as general provisions about settlement, precedent and termination of the settlement agreement.

There are also five attachments, as follows:

**Attachment A:** List of Non-Impaired Wire Centers

**Attachment B:** Triennial Review Remand Order (“*TRRO*”) Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and Covad, Integra, POPP.Com, and XO

**Attachment C:** Triennial Review Remand Order (“*TRRO*”) Wire Center Interconnection Agreement language to be inserted into the proposed Interconnection Agreement between Qwest Corporation and Eschelon

**Attachment D:** Triennial Review Remand Order (“*TRRO*”) Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and McLeodUSA and TDSM

**Attachment E:** Model Protective Order

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

Pursuant to the requirements of OAR 860-01`4-0085, the Parties believe that the Settlement is in the public interest. It resolves contested issues without litigation, and avoids future disputes by setting forth an agreed process for future wire center designations. The Parties agree that the Settlement Agreement resolves all disputed issues to resolve the docket and that if the Settlement Agreement is approved and not terminated, there will be no open issues for the Commission to decide in this docket. While the Parties do not believe there are any issues in the settlement that are inconsistent with the Commission’s September 11, 2006 Report and Order in this docket, the Parties request that the Commission’s order approving the Settlement supersede any previous Commission order to the extent any part of a previous order is inconsistent with the settlement. Qwest and the Joint CLECs will each offer a witness in favor of approval of the Settlement between Qwest and the Joint CLECs if the Commission deems it necessary. However, the Parties recommend that a hearing and witnesses are not necessary in the consideration of this Settlement.

**CONCLUSION**

For all of the reasons set forth above, the Parties respectfully request the Commission to approve the Settlement in its entirety and that such order supersede any previous Commission order in this docket to the extent there are any material differences between the Settlement and such order.

Dated: June 22, 2007

Respectfully submitted,

QWEST CORPORATION



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