

Andrew D. Lipman
Phone: 202.373.6033
Fax: 202.373.6001
andrew.lipman@bingham.com

December 11, 2009

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte*: Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area (WC Docket No. 04-223) and in the Phoenix, Arizona Metropolitan Statistical Area (WC Docket No. 09-135)

Dear Secretary Dortch:

PAETEC Holding Corp., on behalf of its operating subsidiaries, PAETEC Communications, Inc., US LEC and McLeodUSA Telecommunications Services, Inc. (all doing business as "PAETEC"), through its undersigned counsel, submits this letter to briefly respond to several issues raised by Qwest Corporation ("Qwest") in its Reply Comments in WC Docket No. 09-135. Because Qwest has failed to offer commercially reasonable wholesale alternatives in Omaha that were predicted as part of the *Omaha Forbearance Order*,¹ PAETEC respectfully requests that the Commission move forward promptly to grant the pending Petition for Modification in WC Docket No. 04-223 to restore appropriate levels of wholesale competition in the Omaha marketplace.²

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Los Angeles
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Washington

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), *aff'd*, *Qwest Corp v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

² *Petition for Modification of McLeodUSA Telecommunications Services, Inc.*, WC Docket No. 04-223 (filed July 23, 2007) ("*PAETEC Petition*") (attached hereto as Exhibit A).

Failure of the Competitive Market to Thrive in Omaha Is Not a “Myth,” But The Result of an Error That Must Be Corrected As Expressly Contemplated by the Commission

Qwest’s reply comments in WC Docket No. 09-135 include a section urging the Commission to “lay to rest once and for all the Omaha myth.”³ From the breathless tone of its introduction, one would think that Qwest was presenting some dramatic new revelation to correct a previously incorrect or incomplete record. Much to the reader’s disappointment, though, Qwest has simply trotted out the same old misleading arguments that PAETEC has responded to over and over again in previous dockets.

The impact of the *Omaha Forbearance Order* on competition is not a “myth,” but is an unfortunate and sad reality for consumers in the Omaha Metropolitan Statistical Area (“Omaha MSA”). As part of its grant, the Commission predicted that Qwest would voluntarily negotiate reasonable commercial terms and conditions to replace 251(c) unbundled network elements, but the Commission’s optimistic predictions have failed to materialize. In fact, the record of the last four years clearly demonstrates that the *Omaha Forbearance Order* has not brought about the changes or competitive opportunities the Commission predicted.

The primary consequence of the *Omaha Forbearance Order* has been that wireline competitors have largely abandoned the market.⁴ Prior to forbearance, PAETEC was the largest facilities-based CLEC operator in the Omaha MSA, but it was forced to cease selling services to new customers and continues its long and expensive withdrawal from the market.⁵ The limited customers that PAETEC has retained in the Omaha market are

³ See Reply Comments by Qwest Corporation, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, at 48 (filed Oct. 21, 2009).

⁴ See Letter from Andrew D. Lipman, *et al.*, Counsel for Access Point, Inc., *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 08-24 and 08-49, at 2 (filed April 23, 2009) (“*April 23 Ex Parte Letter*”) (attached hereto as Exhibit B). In addition, other wireline CLECs decided against entering the Omaha market after the issuance of the *Omaha Forbearance Order*. See *Comments of Alpheus Communications, L.P., et al.*, *Petition for Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, at 8-9, WC Docket No. 04-223 (filed Aug. 29, 2007).

⁵ While Qwest’s Reply Comments state that PAETEC has not completely withdrawn from the Omaha market, it misleadingly omits that PAETEC has stopped accepting residential and small business customers in Omaha, and has discontinued service to all existing Omaha customers accessed over voice-grade loop facilities. See *Application of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services to Discontinue Domestic Telecommunications Services*, WC Docket No. 09-107 (filed June 11, 2009); Public Notice, DA 09-1389 (released June 22, 2009). The inability of competitors to secure reasonable rates for network elements needed to serve residential and smaller business customers harms competition and is contrary to the Commission’s goals.

almost exclusively “national” account customers that PAETEC continues to serve in Omaha to maintain its relationship with its large strategic customers. Contrary to misguided assertions of Qwest, PAETEC’s exit from the Omaha MSA had everything to do with the forbearance from Section 251(c)(3) requirements that Qwest received under the *Omaha Forbearance Order*, which enabled Qwest to squeeze the competition and resulted in PAETEC’s loss of reasonable access to facilities that are essential to competition.⁶

As a result, the Omaha telecommunications marketplace for residential and business services is now effectively a duopoly consisting of Qwest and Cox. While Qwest is correct that Cox has increased its number of access lines, such shifts in the market merely demonstrate a consolidation of the duopoly structure and do not demonstrate effective competition. For example, export data⁷ since the *Omaha Forbearance Order* shows that 97.5% of former PAETEC customers (both UNE POTs and UNE DS1) in Omaha have taken their local service to either Cox or Qwest. Qwest’s reply comments identify AT&T/TCG as a significant wireline competitor in the Omaha market, but the export data shows that *not a single former PAETEC customer* has ported service to AT&T/TCG. Of course, the duopoly environment resulting from forbearance perfectly explains why Qwest was able to instruct its sales agents in January 2009 that they are not authorized to offer business customers price reductions in the Omaha market.

Contrast the duopoly environment created by the *Omaha Forbearance Order* in Omaha with the comparatively robust competition apparently fostered by the availability of 251(c)(3) UNEs in Qwest’s other major markets where Qwest seeks UNE forbearance. For example, in the Phoenix market, Qwest and Cox account for only 60% of the exports on a combined basis. However, while that percentage is significantly below the Omaha figure – likely due to the availability of UNEs in Phoenix – it is still misleading because exports to Cox represent a very small amount of that combined percentage in the Phoenix market. For DS1 business customers in Phoenix, while Qwest and Cox account for 47% of the exports, Cox is even a smaller percentage of that combined total. Moreover, exports of DS1 customers to other wireline CLECs exceed exports to Cox in the Phoenix market. In other words, competition for business customers is thriving in Phoenix, in stark contrast to Omaha.

Export data from Minneapolis, Denver and Seattle shows business customers in those markets also have access to a broad choice of competitive service providers. In Colorado, ILEC and cable account for just 51% of the exports overall, but only 29% of UNE DS1 business customers have ported service to Qwest or the cable company. In

⁶ Letter from William A. Haas, Vice President, Regulatory and Policy, PAETEC Communications, Inc. to Marlene Dortch, Secretary, FCC, WC Docket No. 07-97, at 3-6 (filed July 10, 2008) (“*July 10 Ex Parte Letter*”).

⁷ An “export” is when a customer terminates local service with PAETEC and ports service to another LEC. PAETEC developed a web interface tool used by other LECs to submit local service requests (“LSR”) that facilitates the porting a customer’s local service to the winning LEC. Each LSR identifies the submitting LEC, which allows PAETEC to track its export data to each carrier. The export data is cumulative for 2006 to 2009.

Washington, ILEC and cable account for 40% of the exports overall, but only 10% of UNE DS1 business customers have ported service to Qwest or the cable company. Minneapolis provides an equally compelling story of robust competition. ILEC and cable account for just 22% of the exports overall, but just 9% of UNE DS1 business customers have ported service to Qwest or the cable company.

The export data provides a clear picture of how the grant of forbearance in Omaha has eliminated all wireline competition to Qwest except for the presence of the cable alternative with its relatively limited footprint. The export data from other markets conclusively shows that business customers are able to select from a wider variety of service providers, presumably because CLECs have continued access to 251(c) loops and transport at cost-based rates. The export data completely invalidates the Commission's prediction that forbearance would not create a duopoly environment in Omaha. Rather, extending forbearance to Phoenix or any other market would likely replicate the Omaha duopoly conditions there.

The strengthening and consolidation of this RBOC-cable duopoly in Omaha has severely limited competition in the enterprise market and has reduced investment, driven out competitors and allowed incumbents to raise prices, which ultimately harms the consumer.⁸ The RBOC-cable duopoly structure has not ended Qwest's dominance because Cox faces its own significant barriers to entry and growth. Unlike Qwest, Cox is not a wholesale provider to almost all of the residential end user locations in the market and Qwest continues to be the sole "last mile" provider to the vast majority of businesses in the Omaha market. While Cox has continued to connect more commercial buildings each year, PAETEC has previously submitted data in the record confirming that expansion to new buildings is occurring in relatively small increments year to year. As previously computed, at the current annual rate of new building connectivity, Qwest will have a bottleneck on last mile facilities to the majority of building premises for more than several decades. As such, Qwest has retained and continues to tighten its stranglehold on the market while it works to foreclose effective competition.

Qwest Has Failed to Offer Commercially Reasonable Wholesale Alternatives in the Post-Omaha Forbearance Order Market

The *Omaha Forbearance Order* was based on the predictive judgment of the Commission that market forces would "prompt [Qwest] to make its network available – at competitive rates and terms – for use in conjunction with competitors' own services and facilities."² However, as PAETEC has repeatedly shown, Qwest has failed to present

⁸ See *April 23 Ex Parte Letter* at 4. Evidence of the decline in competition is demonstrated by the overall decline in the total number of access lines in Nebraska, which has dropped by 19.36% since grant of the *Omaha Forbearance Order*. See *2009 Nebraska Report*, at 3 (reporting 876,060 total access lines as of December 31, 2008) as compared with *2005 Annual Report on Telecommunications*, Nebraska Public Service Commission available at <http://www.psc.state.ne.us/home/NPSC/communication/AnnualReport2005.pdf> (reporting 1,086,444 total access lines as of December 31, 2004).

² *Omaha Forbearance Order* at ¶ 83.

any reasonable proposals to PAETEC for replacement offerings. Specifically, the parties were unable to reach an agreement for the provision of voice grade, DS1 and DS3 services because Qwest presented a “take it or leave it” proposal as well as deficient DS0 replacement proposals.¹⁰ While Qwest disagrees with this characterization, the simple fact of the matter is that PAETEC was not able to secure network access “at competitive rates and terms” from Qwest, and the Commission’s predictions have not been realized.

Qwest’s claims that its special access offerings are sufficient to meet the Commission’s predictive judgment on high capacity UNE facilities are patently wrong. As PAETEC has previously outlined to the Commission, Qwest has not negotiated in good faith and admitted that it refuses to offer any prices other than its tariffed special access rates for its commercial or 271 network element pricing for DS1 and DS3 loops or transport.¹¹ Since those special access rates were available prior to the grant of the *Omaha Forbearance Order*, Qwest cannot now argue that the Commission’s predictive judgment was fulfilled simply through the continued offering of special access rates.¹²

In summary, it is no “myth” but instead a harsh reality that Qwest has refused to negotiate reasonable commercial agreements with carriers that rely upon it to provide loop and transport facilities. As part of its *Omaha Forbearance Order*, the Commission promised to “take appropriate action” should its prediction prove to be “too optimistic.”¹³ Based on Qwest’s track record and the competitive harm readily apparent in the Omaha MSA, the predictive judgment of the Commission was clearly unwarranted and must now be corrected before further damage is done.

¹⁰ *July 10 Ex Parte Letter* at 6. See also Letter from Andrew D. Lipman, *et al.*, Counsel for Affinity Telecom, Inc. *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-97 (filed June 30, 2008).

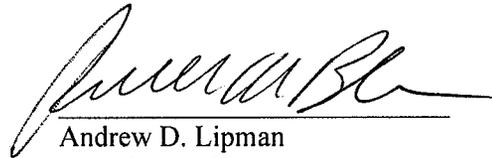
¹¹ *July 10 Ex Parte Letter* at 6, n.18.

¹² *Id.* at 7-8.

¹³ The Commission’s predictive judgment expressly distinguished *between* Section 271 offerings and special access services, rendering invalid any suggestion that the two were meant to be the one and the same thing. *Omaha Forbearance Order* at ¶¶ 80, 83; see also Letter from Andrew D. Lipman, counsel for PAETEC, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-223, at 5-6 (filed Nov. 12, 2007).

Therefore, the Commission should deny Qwest's request for forbearance in the Phoenix, Arizona market and should promptly grant PAETEC's Petition for Modification of the *Omaha Forbearance Order*.

Respectfully submitted,



Andrew D. Lipman
Russell M. Blau

Counsel for PAETEC Holding Corp.

cc: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Ms. Priya Aiyar, Legal Advisor for Chairman Genachowski
Ms. Jennifer Schneider, Legal Advisor for Commissioner Copps
Ms. Christine D. Kurth, Counsel for Commissioner McDowell
Ms. Angela Kronenberg, Legal Advisor for Commissioner Clyburn
Ms. Christi Shewman, Legal Advisor for Commissioner Baker
Ms. Sharon Gillett, Bureau Chief, Wireline Competition Bureau
Mr. Tim Stelzig, Competition Policy Division, Wireline Competition Bureau
Ms. Denise Coco, Competition Policy Division, Wireline Competition Bureau

EXHIBIT A

BINGHAM

LEGAL INSIGHT BUSINESS INSIGHT

Andrew D. Lipman
Direct Phone: 202.373.6115
Direct Fax: 202.373.6001
andrew.lipman@bingham.com

July 23, 2007

VIA ECFS

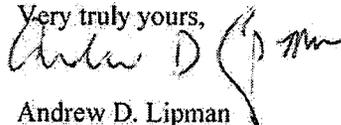
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c)
in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223*

Dear Secretary Dortch:

On behalf of McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), attached for filing in the above-referenced docket is a Petition for Modification of the Commission's December 2, 2005 Memorandum Opinion and Order, which includes the Declarations of August H. Ankum, Don Eben, and Pritesh D. Shah, and supporting exhibits.

If you have any questions about this filing, please let me know.

Very truly yours,

Andrew D. Lipman

Attachments

cc: Chairman Martin (all via email)
Commissioner Copps
Commissioner Adelstein
Commissioner Tate
Commissioner McDowell
Ian Dillner, FCC
Scott Deutchman, FCC
Scott Bergmann, FCC
Chris Moore, FCC
John Hunter, FCC
Thomas Navin, FCC
Pamela Arluk, FCC
Denise Cocoa, FCC
Janice Myles, FCC
Jeremy Miller, FCC
Tim Stelzig, FCC
Best Copy and Printing, Inc.
William H. Haas
Melissa Newman, Qwest (via email and overnight delivery)

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806
202.373.6000
202.373.6001
bingham.com

CERTIFICATE OF SERVICE

I, Robin F. Cohn, do hereby certify that on this 23rd of July 2007, I caused to be served a true and correct copy of the foregoing by delivering copies thereof via electronic and overnight mail to the following:

Melissa Newman
Qwest Corporation
Suite 950
607 14th Street, NW
Washington, DC 20005
Email: Melissa.newman@qwest.com



Robin F. Cohn

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for Forbearance)	WC Doc. No. 04-223
Pursuant to 47 U.S.C. § 160(c) in the)	
Omaha Metropolitan Statistical Area)	

**PETITION FOR MODIFICATION
OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

Andrew D. Lipman
Russell M. Blau
Robin F. Cohn
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC. 20006
(202) 373-6000 (telephone)
(202) 373-6001 (facsimile)

Dated: July 23, 2007

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SUMMARY

The Commission should modify the *Omaha Forbearance Order* by reinstating Qwest's Section 251(c)(3) unbundling obligations in the Omaha MSA. That Order was expressly contingent on a "predictive judgment" that Qwest would provide network elements at just and reasonable rates, which in fact it has not done. The Commission said it could alter its ruling if Qwest failed to offer just and reasonable post-forbearance offerings. Unfortunately, Qwest has wholly failed to meet the Commission's expectation and the Commission should now revoke the Section 251(c)(3) forbearance in the Omaha MSA. Absent relief from the Commission, McLeodUSA will be forced to exit the Omaha market due to the infeasibility of executing its business plan under the terms of Qwest's unilateral and unreasonable post-forbearance offerings.

In stark contrast to the Commission's "predictive judgment" that Qwest's post-Omaha Order offerings would be just and reasonable, and despite McLeodUSA's diligent efforts to negotiate acceptable terms, Qwest has proposed only uneconomical, onerous, and non-negotiable offerings to replace the Section 251(c)(3) network elements for the affected wire centers. Its demands include price increases in the range of 30% or more for monthly charges for DS0 stand alone loops, a minimum increase of 86% for DS1 access loops, and a 360% increase in associated non-recurring charges for installing DS1 access loops. Although the Commission predicted that Qwest would not react to forbearance by curtailing wholesale access to its DS0, DS1, or DS3-capacity facilities, that is precisely what has happened.

Furthermore, Qwest's actions cannot be reconciled either with the Commission's confidence that market incentives would motivate it to meet its obligation to provide wholesale access to network elements pursuant to Section 271, or with the public interest standard articulated in Section 10(c). Because the Commission's grant of forbearance was premised in part on Qwest's

compliance with its Section 271 obligations, Qwest's improper actions plainly show that revision of the *Omaha Forbearance Order* is necessary. Qwest's refusal to act in accordance with the Commission's expectations is likewise fundamentally incompatible with the public interest. McLeodUSA's market exit will reduce consumer choice by eliminating one of the very few facilities-based telecommunications services providers in the Omaha MSA.

The Commission specified that if its "predictive judgment" proved "too optimistic," carriers could request that the Commission reconsider its ruling. Now, nearly twenty months after the Commission's decision, Qwest has yet to make any just and reasonable wholesale replacement arrangements available to McLeodUSA. The company faces the impending prospect of having to discontinue its operations in the Omaha market as the direct result of Qwest's conduct. The Commission's oversight is urgently necessary to prevent McLeodUSA's exit from the Omaha MSA. The Commission should immediately act on its promise to monitor Qwest's wholesale market behavior by reinstating Qwest's Section 251(c)(3) unbundling obligations.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of Qwest Corporation for Forbearance) WC Doc. No. 04-223
Pursuant to 47 U.S.C. § 160(c) in the)
Omaha Metropolitan Statistical Area)

PETITION FOR MODIFICATION
OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), by its undersigned counsel, submits this petition for modification of the Commission’s *Omaha Forbearance Order*.¹ McLeodUSA urges the Commission to reinstate Qwest’s Section 251(c)(3) loop and transport unbundling obligations in the Omaha Metropolitan Statistical Area (“MSA”), because its “predictive judgment” that Qwest would offer wholesale access to dedicated facilities on reasonable terms and conditions once released from the legal mandate of Section 251(c) has proven incorrect. The Commission should carry out its promise to monitor Qwest’s behavior in the wholesale market and should revoke the forbearance granted to Qwest from providing UNE loops and transport at TELRIC prices in nine wire centers in the Omaha MSA.

I. BACKGROUND

Qwest petitioned the Commission pursuant to Section 10 of the Act, 47 U.S.C. § 160, seeking forbearance from the application of four broad categories of regulation in its service areas in the Omaha MSA, which includes communities in Nebraska and Iowa. The Commis-

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223, 20 FCC Rcd 19415 (2005) (“*Omaha Forbearance Order*”).

sion's December 2, 2005, decision "granted substantial relief" for several of Qwest's requests.² Among other relief, the Commission relieved Qwest from the obligation to provide unbundled loops and dedicated transport at cost-based rates pursuant to Section 251(c)(3) in nine wire centers within the Omaha MSA.³

However, the Commission rejected Qwest's request for forbearance of its Section 271(c)(2)(B) obligations to provide wholesale access to local loops and transport "at just and reasonable prices."⁴ It specified that, "Our justification for forbearing from Qwest's section 251(c)(3) obligations for loops and transport in certain areas depends in part on the continued applicability of Qwest's wholesale obligations to provide these network elements under sections 271(c)(2)(B)(iv) and (v)."⁵

In making the Section 10(a)(3) public interest determination that was necessary to justify forbearance from the requirements of Section 251(c), the Commission made a "predictive judgment" that, "based on previous experience in the market for wireline local exchange service

² *Id.*, ¶ 1.

³ *Id.*, ¶ 2.

⁴ *Id.*, ¶ 103 (referring to 47 C.F.R. § 271(c)(2)(B)(iv-vi)).

⁵ *Id.*, ¶ 105. *See Id.*, ¶ 96 ("part of the reason we are able to grant Qwest forbearance from section 251(c)(3) unbundling obligations for loops and transport is because a comparable wholesale access obligation exists under section 271(c)"). Qwest's independent obligation to offer loops, transport, and other network elements was likewise addressed in the *Triennial Review Order*. *See 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, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 653 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) ("*Triennial Review Order*" or "*TRO*") ("the requirements of Section 271(c)(2)(B) established an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251"). Furthermore, such facilities must be priced on a just, reasonable, and not unreasonably discriminatory basis." *Id.*, ¶ 656.

served by Qwest and in other markets, that Qwest will not react to our decision here by curtailing wholesale access to its analog, DS0, DS1 or DS3-capacity facilities.”⁶

The Commission’s prediction was based in part on the fact that Qwest had entered into commercial agreements with UNE-P providers.⁷ Noting that Qwest had previously taken steps to enter into commercial agreements with carriers where not compelled to do so, the Commission stated, “Here, too, we predict that Qwest’s market incentives will prompt it to make its network available – at competitive rates and terms – for use in conjunction with competitors’ own services and facilities. We will monitor the accuracy of this prediction in the wake of our decision; in the event it proves too optimistic, we will take appropriate action.”⁸

The Commission further clarified that, “To the extent our predictive judgment proves incorrect, carriers can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling.”⁹ Despite the Commission’s forewarning, Qwest’s actions have shown that, in the absence of regulatory oversight over wholesale pricing, there simply are not adequate market incentives for an RBOC to offer reasonable wholesale rates to competitors for essential bottleneck facilities. It is now necessary for the Commission to fulfill its promise to monitor Qwest’s behavior, and to exercise its option to revoke forbearance as to

⁶ *Id.*, ¶ 79.

⁷ *Id.*, ¶ 82. See *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005), *aff’d*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006) (“*Triennial Review Remand Order*” or “*TRRO*”).

⁸ *Id.*, ¶ 83.

⁹ *Id.*, ¶ 83, n.204.

Qwest's Section 251(c) obligations so that CLECs can obtain unbundled loop and transport network elements to the extent that they are "impaired" under the rules adopted in the *TRRO*.¹⁰

II. QWEST HAS FAILED TO OFFER NETWORK ELEMENTS AT JUST AND REASONABLE WHOLESALE RATES TO MCLEODUSA IN THE NINE AFFECTED WIRE CENTERS

Qwest's conduct belies the Commission's prediction that "market incentives" would motivate Qwest to make reasonable wholesale offerings of essential network elements available to competitors after forbearance from Section 251(c) UNE obligations. Qwest instead has failed to comply with its obligation to offer "just and reasonable prices" to competitors under Section 271. With respect to McLeodUSA, Qwest has conclusively refused to negotiate wholesale pricing for voice-grade, DS1, and DS3 loops and transport for the nine affected wire centers. Instead, as explained herein and in the accompanying Declaration of Don Eben, Qwest has offered only to replace high-capacity UNEs with special access services from its FCC Tariff No. 1, at vastly higher rates for both recurring and non-recurring charges.¹¹ Qwest proposes to offer stand alone DS0 loops at rates that are nearly 30% higher than the previous UNE prices for identical network facilities.¹²

Moreover, Qwest recently has attempted to require McLeodUSA to execute a burdensome and uneconomic package of unilaterally drafted, non-negotiable agreements, including a "commercial" DS0 loop offering that imposes considerable increases over TELRIC rates, as well

¹⁰ *TRRO*, ¶¶ 5, 22-23.

¹¹ See attached Declaration of Don Eben ("Eben Declaration"), ¶¶ 5-19, 27-28.

¹² *Id.*, ¶¶ 25-26.

as unreasonable terms and conditions that, among other things, insulate Qwest from any performance metrics and obligations for service provisioning.¹³

With regard to DS1 and DS3 loops, Qwest has merely offered the tariffed “Regional Commitment Program” (“RCP”) from its special access tariffs. The RCP provides a discount off of the monthly special access rates, but only if McLeodUSA binds itself, and is able to comply with, term and volume commitments for obtaining such facilities.¹⁴ In other words, to obtain somewhat less oppressive special access pricing in the nine wire centers affected by the *Omaha Forbearance Order*, McLeodUSA would have to forego the opportunity to obtain such facilities as UNEs at significantly more economical, cost-based rates throughout the rest of Qwest’s operating territory. These conditions make Qwest’s discount offer a mere charade. It is evident that, absent any relief from the Commission, McLeodUSA will be forced to replace the essential network elements formerly available as UNEs by leasing such facilities from Qwest at a combination of prohibitive special access rates and premium DS0 “commercial” rates.

McLeodUSA has made repeated good faith attempts to negotiate wholesale replacement arrangements with Qwest following release of the *Omaha Forbearance Order*. However, these efforts have met with Qwest’s steadfast refusal to negotiate any wholesale pricing for high capacity facilities in the affected wire centers that deviates from its special access and RCP pricing. McLeodUSA first contacted Qwest to negotiate wholesale pricing for the affected

¹³ *Id.*, ¶¶ 24.

¹⁴ *Id.*, ¶¶ 10-11.

Omaha wire centers in January, 2006.¹⁵ Although the parties held a preliminary conference call on January 24, 2006, Qwest repeatedly delayed further meetings, failed to participate in scheduled conference calls, and did not respond to email communications from McLeodUSA regarding the parties' negotiations.¹⁶ On April 7, 2006, McLeodUSA again sought Qwest's attention and noted its uncooperative attitude.¹⁷ Qwest responded on the same day, advising McLeodUSA that it expected to be in a position to resume negotiations the following week.¹⁸ However, McLeodUSA received no further communications from Qwest until October 26, 2006, when McLeodUSA's negotiator sent an email message seeking information about the status of the parties' negotiations.¹⁹ Qwest again replied on the same day and indicated that it would make the appropriate inquiries in order to continue negotiations.²⁰ Although meetings and e-mail exchanges continued through December 6, 2006, no further meetings between the companies' respective negotiators have taken place.²¹

In a January 22, 2007, *ex parte* filed with the Commission in this docket, Qwest alleged that McLeodUSA had refused to meet with Qwest to negotiate. What Qwest's filing failed to disclose is that Qwest had previously made it clear that it was unwilling to negotiate certain

¹⁵ Eben Declaration, ¶ 16. McLeodUSA likewise requested that Qwest negotiate wholesale pricing based on its Section 271 obligation to offer just and reasonable prices for loops, transport and other elements.

¹⁶ *Id.*, ¶ 16.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, ¶ 17.

²⁰ *Id.*

²¹ *Id.*

terms. It is these non-negotiable terms and conditions that make such an agreement economically untenable for McLeodUSA.²² The fact that Qwest is willing to meet but unwilling to change its position on critical economic issues illustrates that the Commission's predictive judgment that market incentives would compel Qwest to negotiate reasonable wholesale pricing and terms and conditions is simply amiss. Qwest is exercising monopoly power by refusing to change its position on key points since it knows McLeodUSA has no alternative supplier of network elements. There simply is no market force constraining Qwest from offering a "take it or leave it" proposal.

Of course, forcing McLeodUSA out of the market means that current McLeodUSA customers will be forced to go back to Qwest, thereby increasing the margin Qwest will realize from directly serving these end users.²³ Thus, it is not surprising that Qwest is refusing to negotiate. It was this very concern – that an unregulated RBOC would have the ability to price squeeze competition out of the local market – that was the basis for Section 251(c) of the 1996 Act.

McLeodUSA recently renewed its request for Qwest to provide a price list for the affected elements based on Qwest's Section 271 obligations to offer them at just and reasonable

²² These terms and conditions are critical because an RCP will lock McLeodUSA into a region-wide commitment level for special access circuits, which, if not met, will result in monetary penalties such as the loss of RCP discounts. Eben Declaration, ¶ 11. Qwest is well aware that McLeodUSA cannot accept the current level of special access circuits in a new RCP because McLeodUSA has a significant number of existing special access circuits that it plans to convert to UNE circuits (where such circuits can be purchased as UNEs). *Id.*, ¶ 14.

²³ While it is possible that some mass market customers may choose to switch to Cox, *see Omaha Forbearance Order*, ¶ 66, business customers, and, in particular, small and medium sized customers served with T1 services, will not actually have a choice of facilities-based providers unless Cox is directly connected to each affected customer's premise with their own connection. The evidence in this docket did not indicate that Cox had actual connections to each business customer location, but only that Cox's network passed by many locations in certain wire centers.

prices.²⁴ McLeodUSA emphasized that the Commission rejected Qwest's request for forbearance from its Section 271 obligations in the *Omaha Forbearance Order*, observed that several state commissions have commenced proceedings to establish Section 271 pricing (for which, in some instances, TELRIC principles have been applied as an interim solution), and assured Qwest that "McLeodUSA is willing to consider any reasonable starting point for the negotiation of 271 pricing."²⁵ To date, Qwest has not provided a proposed Section 271 pricing list. Instead, by its silence, Qwest apparently continues to maintain that its special access/RCP offer satisfies its Section 271 obligation.

While Qwest has offered unregulated "commercial" pricing for DS0 loops, McLeodUSA's review of Qwest's recently-provided proposed agreement revealed numerous unacceptable and onerous terms. For example, Qwest has priced the commercial two-wire DS0 loop rates for Omaha nearly 30% higher than TELRIC rates, and has specifically excluded this offering from all wholesale performance standards, including Section 271 performance metrics.²⁶ Moreover, the commercial pricing for standalone DS0 loops confirms the anticompetitive nature of Qwest's wholesale pricing. Qwest offers CLECs a lower-cost DS0 loop if the CLEC combines that loop with Qwest local switching. The identical loop facility is nearly 30% more expensive when purchased without Qwest local switching attached.²⁷ Clearly, there is no cost justification

²⁴ See Eben Declaration, ¶¶ 22, 24-25, and Exhibit 3 attached thereto.

²⁵ *Id.*

²⁶ *Id.*, ¶¶ 20, 24-25, and Exhibit 3, pages 43-70 of 70 attached thereto (Qwest's DS0 Loop Facility offering is attached to the MSA as Service Exhibit 1). According to Qwest's website, only one CLEC (TCG Omaha) has executed what appears to be Qwest's template agreement. See <http://www.qwest.com/wholesale/clecs/commercialagreements.html>.

²⁷ *Id.*, Eben Declaration, ¶¶ 25-26.

for the significantly higher price point. Qwest is merely able to extract a 30% monopoly premium for the standalone DS0 loop since CLECs have no alternative. There is no “market incentive” since Qwest has no competition in the wholesale market for DS0 loops. This price discrimination is wholly inconsistent with the Commission’s prediction that Qwest would offer network facilities at competitive rates for use in conjunction with a “competitor’s *own* services and facilities.”²⁸ Qwest’s price discrimination appears to be intentionally designed to drive facilities-based competitors out of the market.

Another egregious illustration of Qwest’s refusal to negotiate wholesale pricing involves the exorbitant non-recurring charges (“NRCs”) that it demands for high capacity circuits. For example, the cost-based NRC to install a UNE DS1 loop and cross connect in Nebraska is \$136.15.²⁹ For the *Omaha Forbearance Order* wire centers, Qwest has set the NRC at \$626.50.³⁰ That amounts to a post-forbearance NRC increase of approximately 360%.

Monthly recurring charges (“MRCs”) also increase significantly in the forbearance wire centers for high capacity facilities. UNE DS1 loops in Zone 1 increase from \$76.42 to a special access “price flex” rate of \$182.22, a 138% increase.³¹ Moreover, switching to special access from UNEs transforms most affected Omaha wire centers from low-cost Zone 1 UNE wire

²⁸ *Omaha Forbearance Order*, ¶ 83.

²⁹ Eben Declaration, ¶ 27.

³⁰ *Id.* Qwest has been granted pricing flexibility in all nine Omaha wire centers affected by the forbearance. See *Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 02-01, Memorandum Opinion and Order, 17 FCC Rcd 7363 (WCB Apr. 24, 2002) (granting Qwest Phase II pricing flexibility in the Omaha MSA, among other MSAs). This has permitted Qwest to *increase* its pricing for high capacity circuits. See Eben Declaration, ¶ 9. It therefore appears that Qwest’s response to the grant of special access pricing deregulation was a better indicator of what Qwest would do once Section 251(c) UNEs were eliminated.

³¹ Eben Declaration, ¶ 6.

centers to higher cost special access zones. Only one of the affected Omaha wire centers is a Zone 1 special access wire center; five are Zone 2, with a “price flex” rate of \$192.22, and two are Zone 3, with a “price flex” rate of \$202.22.³² The prospect of these cost increases has already led McLeodUSA to significantly limit its Omaha operations as described in Section III, *infra*. McLeodUSA cannot be a viable competitor in Omaha unless the wholesale pricing regime is significantly modified.³³

Qwest’s persistent refusal to negotiate wholesale rates following the *Omaha Forbearance Order* contravenes not only the Commission’s predictive judgment regarding Qwest’s conduct once forbearance was granted for Section 251(c)(3) loops and transport, but its Section 271 obligation to provide wholesale access to local loops, transport, and other network elements “at just and reasonable prices.”³⁴ Because the Commission’s predictive judgment was premised in part on Qwest’s compliance with Section 271 pricing requirements, Qwest’s flouting of this obligation provides further reason for the Commission to modify the *Omaha Forbearance Order* at this time.

³² Eben Declaration, ¶¶ 7-8 and Exhibit 1, at 3.

³³ To date, Qwest has continued to invoice McLeodUSA in the affected Omaha wire centers at UNE pricing. However, it is Qwest’s position that it is entitled to re-rate all network elements in the affected wire centers to the March 2006 effective date of the *Omaha Forbearance Order* and backbill McLeodUSA. Accordingly, for planning and financial purposes, McLeodUSA has had to operate as if the higher costs resulting from the loss of UNEs are already in effect. McLeodUSA is particularly disadvantaged because, in contrast to the *ACS Order*, where the Commission’s grant of forbearance was conditioned on ACS’s continued provision of local “legacy” loops pursuant to the existing rates, terms and conditions between ACS and GCI in Fairbanks, Alaska, until such time as commercial agreements were concluded, the *Omaha Forbearance Order* contains no provision for interim pricing pending the negotiation of commercial replacement arrangements. See *Petition of ACS of Anchorage, Inc., Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188, ¶ 39 (rel. Jan. 30, 2007) (“*ACS Order*”).

³⁴ *Omaha Forbearance Order*, ¶ 103.

Qwest's tariffed special access RCP offering, which provides a 22% discount from tariffed monthly special access rates if term (48 months) and volume commitments are met, cannot represent the wholesale access that the Commission relied on in rendering its predictive judgment.³⁵ First, Qwest has offered RCPs for a number of years, so this offering was not made in response to the FCC's prediction that Qwest would offer reasonable wholesale pricing.³⁶ Nor can an RCP agreement be characterized as a commercially *negotiated* agreement since Qwest has offered RCP as part of its filed tariff on a take it or leave it basis for a number of years. Second, a CLEC does not receive the RCP discount unless all of the agreement's conditions are met, and it is subject to financial penalties for failing to satisfy them. An RCP can in no way be considered a wholesale pricing arrangement that discharges Qwest's obligations under the *Omaha Forbearance Order*, and the Commission should not permit Qwest to evade its wholesale pricing requirements in the guise of an RCP offering. Indeed, even if a CLEC qualified for the 22% RCP discount, the lowest new "discounted" price in the affected Omaha wire centers is \$145.92, which is still 91% higher than the monthly UNE rate for DS1 circuits. For the five wire centers in special access Zone 2, the discounted RCP price is \$153.72,³⁷ a 101% increase. The RCP price for the two Zone 3 wire center circuits would be \$161.52,³⁸ a 111% increase in the MRC.

Qwest's ability to, at a minimum, double MRCs and quadruple NRCs for high capacity circuits demonstrates the absence, not the existence, of market forces, as well as Qwest's will-

³⁵ Qwest FCC Tariff No. 1, Section 7.1.3(b).

³⁶ Eben Declaration, ¶ 12. McLeodUSA formerly had an RCP agreement with Qwest, but it currently has no such arrangement since the company continues to have a number of special access circuits to convert to UNEs.

³⁷ *Id.*, ¶ 13.

³⁸ *Id.*

ingness to take advantage of its deregulated monopoly power. And of course, since Qwest has been granted pricing flexibility, there is no constraint on its ability to further increase rates above these current special access price points.

McLeodUSA has evaluated the impact of Qwest's replacement of UNE services with special access services and the "commercial" pricing arrangements offered in Qwest's DS0 loop agreement in the nine wire centers affected by the *Omaha Forbearance Order*.³⁹ These dramatic cost increases leave no doubt that Qwest has failed to offer reasonable wholesale replacement arrangements and plainly show that the Commission's confidence in Qwest's willingness to do so once unencumbered by regulatory constraints was misplaced. Revision of the *Omaha Forbearance Order* is therefore warranted.

III. PUBLIC INTEREST CONSIDERATIONS COUNSEL IN FAVOR OF MODIFYING THE *OMAHA FORBEARANCE ORDER*

Section 10(c) of the 1996 Act states that the FCC shall forbear from applying the Act or its rules if granting forbearance meets each of three criteria, one of which is that granting forbearance is "consistent with the public interest." The Act goes on to define the public interest test as follows:

the Commission shall consider whether forbearance from enforcing the provision or regulation will *promote* competitive market conditions, including the extent to which such forbearance will *enhance* competition *among providers of telecommunications services*. If the Commission determines that such Communications Act of 1934 forbearance will *promote* competition *among providers of telecommunications services*, that determination may be the

³⁹ See attached Declaration of Pritesh D. Shah ("Shah Declaration"), ¶ 7.

basis for a Commission finding that forbearance is in the public interest.⁴⁰

In the *Omaha Forbearance Order*, the Commission did not discuss how granting forbearance would “promote” or “enhance” competition among “providers of telecommunications services.” Instead, it concluded that granting forbearance would foster “regulatory parity” between intermodal competitors, and concluded that that goal satisfied the public interest test.⁴¹ The Commission also stated that the costs of Section 251(c)(3) unbundling were outweighed by the benefits of regulatory parity.⁴²

It is important to note that Section 10(c) does not mention the promotion of “regulatory parity” as being in the public interest. Considering that Congress itself mandated different regulatory regimes for cable companies and ILECs in the 1996 Act, one must presume that if fostering regulatory parity among these companies was a legitimate goal of forbearance that would meet the public interest test, Congress would have mentioned it. Instead, Congress declared that promotion or enhancement of competition among providers of telecommunications

⁴⁰ 47 U.S.C. § 160(b) (emphasis added).

⁴¹ *Omaha Forbearance Order*, ¶ 78.

⁴² *Omaha Forbearance Order*, ¶ 76. Given the Commission’s conclusion that Qwest continues to have Section 271 unbundling obligations, and because Qwest itself is willing to offer network elements under commercial agreements, the basis for finding that the costs of Section 251(c)(3) unbundling “outweigh the benefits” is unclear. First, Qwest has a continuing obligation to provision UNEs for wire centers that are not subject to forbearance or where CLECs continue to be impaired under the *TRRO*. Qwest order processing centers for UNEs are highly centralized, and the cost of developing the UNE ordering systems has already been incurred. Thus, eliminating the Section 251(c)(3) unbundling obligation for the nine affected wire centers will have a very minor, if not insignificant, effect on the incremental costs Qwest incurs to provision UNEs. See attached Declaration of August H. Ankum at ¶ 4.

Second, the *Omaha Forbearance Order* requires Qwest to provide Section 271 network elements in these nine wire centers. Indeed, Qwest is willing to provide network elements on a commercial basis. Because the provisioning processes for UNEs and special access facilities are nearly indistinguishable, Qwest’s costs will not be materially reduced under a forbearance regime. *Id.* at ¶ 5.

services was the public interest that forbearance should foster.⁴³ Granting forbearance that enables the RBOC to price other facilities-based CLECs out of the market does not “promote” or “enhance” competition. At best, forbearance creates a duopoly facilities-based supply situation for mass market end user customers, and arguably hands back the RBOC a monopoly in the enterprise market.

In this instance, the grant of forbearance is causing the elimination of competition from one of the few facilities-based providers of telecommunications services in the Omaha MSA. McLeodUSA is currently in the midst of planning its exit from Omaha wire centers because it cannot compete in the market due to Qwest’s unwillingness to offer just and reasonable wholesale pricing, a direct result of the grant of forbearance to Qwest from Section 251(c) obligations.⁴⁴ Furthermore, because the telecommunications industry is one of scale, McLeodUSA will not just exit the nine wire centers in which forbearance was granted. The nine affected wire centers represent the vast majority of revenue opportunity of McLeodUSA’s current and prospective customer base.⁴⁵ Accordingly, McLeodUSA is being forced to exit all Omaha wire centers⁴⁶ because there is simply not enough revenue potential in the unaffected Omaha wire centers to justify the ongoing operating costs of the local switching center and related expenses.⁴⁷

⁴³ 47 U.S.C. § 160(b).

⁴⁴ See Shah Declaration, ¶¶ 7-8.

⁴⁵ See Shah Declaration, ¶ 8. Attached as Exhibit 1 to the Shah Declaration are maps showing the before and after impact of the forbearance grant. While the unaffected geographical area looks comparable in size, the reality is that the vast majority of business customers are located in the nine affected wire centers.

⁴⁶ See Shah Declaration, ¶¶ 8, 10. McLeodUSA will continue to offer local services out of its two Council Bluffs collocations by providing dial tone from its local switch in Des Moines, Iowa, in conjunction with its intercity fiber network. There are networking and interconnection issues that render it

In the *Omaha Forbearance Order*, the Commission predicted that the market would constrain Qwest from abusing its wholesale access pricing once relieved of its cost-based UNE obligations in Omaha.⁴⁸ However, the Commission's prediction was unfounded,⁴⁹ the circumstances the Commission described in the *Omaha Forbearance Order* that would lead it to revisit its ruling have taken place, and pricing abuse has materialized. It would be contrary to the public interest to allow the Section 251(c) forbearance ruling to stand under these circumstances, and the Commission should revoke this aspect of the *Omaha Forbearance Order*.

impossible to provide dial tone from the Des Moines switch to the Omaha collocations. Shah Declaration, ¶ 7.

⁴⁷ It is important to note that McLeodUSA's exit from the Omaha market will potentially cause more than its own retail customers to lose their carrier of choice in the Omaha market. McLeodUSA provides wholesale local services (a combination of McLeodUSA local switching and transport with a UNE loop) to another significant CLEC in the Omaha market. McLeodUSA also provides broadband access to a significant "over the top" VoIP provider in this market. These other service providers will face higher costs in the Omaha MSA once McLeodUSA exits this market. Accordingly, these service providers will also have to make a decision about whether to exit the market or attempt to pass through significantly higher costs to their end users. *See* Shah Declaration, ¶ 4.

⁴⁸ *Omaha Forbearance Order*, ¶ 79. In the *TRRO*, in the context of finding that a rule barring access to UNEs based on the availability of tariffed alternatives creates a risk of abuse by ILECs, the Commission noted the potential for price squeezes due to the control maintained by ILECs over special access pricing. *TRRO*, ¶ 59.

⁴⁹ The Commission's prediction was based on the notion that Qwest had "voluntarily" negotiated commercial UNE-P arrangements. In fact, none of Qwest's commercial agreements were truly "negotiated" *after* Qwest had been freed from regulatory wholesale pricing oversight. *See* Letter from William Haas, McLeodUSA, to Marlene Dortch, Secretary, WC Doc. 04-223, at 3 (filed Sep. 14, 2005); *see also* Letter from Patrick Donovan, Swidler Berlin LLP, to Marlene Dortch, Secretary, WC Doc. 04-223, at 11 (filed Feb. 3, 2006) (attaching Motion for Stay). While it is true that Qwest negotiated a commercial UNE-P replacement agreement with MCI, that deal was negotiated and announced before the FCC announced the elimination of UNE-P in its interim order on July 21, 2004. All of the remaining commercial agreements between Qwest and CLECs for commercial UNE-P replacement services mirrored the Qwest-MCI agreement. Qwest refused to negotiate substantive changes (such as different price points) to its template MCI agreement. Thus, attributing these commercial agreements to Qwest's reaction to market forces is not an accurate reflection of circumstances that existed when the underlying terms of Qwest's commercial agreements were negotiated.

The Commission's prediction that Qwest would comply with its independent obligation to provide wholesale access to loops and transport "at just and reasonable prices" under Section 271(c)(2)(B), which was explicitly made part of the justification for granting forbearance from Section 251(c)(3), has likewise failed to materialize.⁵⁰ Qwest has not responded to McLeodUSA's numerous inquiries regarding the negotiation of Section 271 pricing other than to cryptically assert that McLeodUSA's request for Section 271 pricing "is really a complaint that Qwest will not agree to TELRIC pricing."⁵¹ To the contrary, Qwest's proposed UNE replacement arrangements indicate that Qwest does not intend willingly to offer "just and reasonable prices" and related terms, such as performance metrics, that are associated with Section 271 offerings.⁵²

Similarly, although the Commission's findings were based in part on the fact that Qwest voluntarily entered into some commercial agreements with UNE-P providers,⁵³ the Commission's prediction that Qwest would act reasonably with regard to wholesale loops and transport was incorrect. As McLeodUSA noted in its Motion for Stay of the *Omaha Forbearance Order*, commercial agreements do not necessarily produce competitive rates. Instead, Qwest's pricing decisions in the absence of Section 251(c) requirements demonstrate that it will take advantage of the fact that it is the only wholesale provider of last mile loop facilities in Omaha and reflect its attempt to consolidate its current position in lieu of maintaining reasonable access to last mile

⁵⁰ See *Omaha Order*, ¶¶ 96, 105.

⁵¹ See Letter from Daphne E. Butler, Qwest, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 04-223 & 05-281, at 3-4 (filed Jan. 22, 2007).

⁵² Eben Declaration, ¶ 24.

⁵³ See *Omaha Forbearance Order*, ¶ 82.

network facilities as the Commission intended. This blatantly defies the public interest and provides the Commission with further reason to revoke the Section 251(c) forbearance granted to Qwest.⁵⁴

Furthermore, “me too” forbearance petitions filed by Verizon and by Qwest itself are now pending before the Commission.⁵⁵ Because the Commission’s *Omaha Forbearance Order* ruling was based in part on a “predictive judgment” that has proven incorrect, it should revisit the decision at this juncture in order to avoid inappropriate extension of the ruling to pending and future forbearance proceedings involving Qwest and other ILECs.

Finally, McLeodUSA is not alone in its evaluation that the impact of the *Omaha Forbearance Order* forecloses a facilities-based competitor from competing in the Omaha MSA under the pricing terms that Qwest has offered to date. In comments recently filed in the pending Verizon forbearance docket, Integra Telecom, Inc. (“Integra”) explained that it entirely aban-

⁵⁴ UNE-P and related commercial arrangements (consisting both of commercially priced elements and UNE loops) are further distinguishable because they derived in part from Qwest’s obligation to provide cost-based elements. Therefore, less opportunity existed for Qwest to exploit the pricing of such agreements, and the Commission’s impression that their existence indicated that Qwest’s post-forbearance actions would be reasonable was incorrect.

⁵⁵ *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area, WC Doc. No. 06-172 (filed Sept. 6, 2006); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Colorado Metropolitan Statistical Area; Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis-St. Paul, Minnesota Metropolitan Statistical Area; Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area; Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Seattle, Washington Metropolitan Statistical Area, WC Docket No. 07-97 (filed Apr. 27, 2007).*

done its plans to enter the Omaha market as a result of the *Omaha Forbearance Order*. Integra stated that its decision was motivated by the failure of the Commission's predictive judgment to materialize.⁵⁶ Integra found that it was "substantially less attractive economically to enter the Omaha market without access to unbundled network elements at TELRIC rates in the entire Omaha market" and decided that the investments it was prepared to make to provide service in Omaha would be better utilized in other markets.⁵⁷ It emphasized the infeasibility of Omaha market entry via deployment at special access rates, noting that it would be extremely difficult for a CLEC to provide service to small and medium business customers in competition with the ILEC if loops and transport were priced at special access rates.⁵⁸ Integra's experience starkly illustrates the negative effects of Qwest's ability to revert to monopolistic practices and keep would-be competitors out of the market once unfettered by Section 251(c) obligations, thereby tightening Qwest's stronghold over the market to the exclusion of competitors.

Integra evidently is not alone in its reluctance to enter the Omaha market. McLeodUSA has been unable to entice any buyer for its Omaha assets despite numerous efforts. The last interested party declined to purchase the assets despite being offered them for pennies on the dollar. The lack of reasonable wholesale pricing for last mile loop facilities was the primary issue

⁵⁶ Comments of Integra Telecom, Inc., WC Docket No. 06-172, at 4 (filed March 5, 2007) ("The Commission's 'predictive judgment' that the ILEC will have an incentive to offer wholesale facilities at reasonable rates to its competitors has proven to be flawed in Omaha. The prediction "that Qwest will not react to our decision here by curtailing wholesale access to its analog, DS0, DS1, or DS2-capacity facilities turned out to be wrong").

⁵⁷ *Id.* at 4.

⁵⁸ *Id.* at 5.

that caused all prospective parties to back away from purchasing the assets.⁵⁹ Absent an 11th hour reprieve from the Commission, that means that the vast majority of McLeodUSA's \$25,000,000 investment in its own network facilities (Class 5 switch, collocations, intracity fiber ring, etc.) to offer a facilities-based competitive choice to a broad range of customers in the Omaha MSA in fulfillment of the 1996 Act will have been rendered worthless by the grant of forbearance, despite the Congressional mandate that forbearance should be granted to “*promote* competitive market conditions, including the extent to which such forbearance will *enhance* competition.”⁶⁰

In light of Qwest's pricing abuses, the Commission should reconsider its ruling and find that continuing to relieve Qwest from its Section 251(c) obligation to provide UNE loops and transport at TELRIC rates in nine wire centers in the Omaha MSA will result in the foreclosure of competitive entry, higher prices, and other negative consequences, all of which are manifestly contrary to the public interest.

IV. CONCLUSION

Unfortunately, the Commission's predictive judgment regarding Qwest's actions has been proven wrong. Contrary to the expectation stated in the *Omaha Forbearance Order* and in patent disregard of its Section 271 obligation to offer loops and transport at “just and reasonable” rates, Qwest has failed to make such facilities available on competitive rates and conditions. Instead, Qwest has offered to replace the Section 251(c) UNEs previously provided at TELRIC rates only on non-negotiable, uneconomic, and unacceptable rates and terms. These include tariffed special access services at monopolistic prices; a “commercial agreement” for DS0 loops

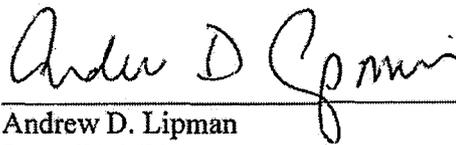
⁵⁹ See Shah Declaration, ¶ 9.

⁶⁰ 47 U.S.C. § 160(b) (emphasis added).

that reflects unreasonable rates and unacceptable conditions, such as Qwest's exclusion from any performance metrics; and, with regard to DS1 and DS3 loops, execution of a footprint-wide RCP contract that provides modest discounts from tariffed special access rates, but only if McLeodUSA agrees to (and is able to comply with) stringent term and volume commitments for replacing Section 251(c) UNEs with special access facilities throughout Qwest's 14-state region.

The Commission should therefore reconsider its determination, revoke the forbearance granted to Qwest from providing UNE loops and transport at TELRIC prices in nine wire centers in the Omaha MSA, and restore Qwest's obligation to unbundle loop and transport network elements to the extent that CLECs are "impaired" under the rules adopted in the *TRRO*.

Respectfully submitted,



Andrew D. Lipman
Russell M. Blau
Robin F. Cohn
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000 (telephone)
(202) 373-6001 (facsimile)

Counsel to McLeodUSA Telecommunications
Services, Inc.

Dated: July 23, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition of Qwest Corporation for Forbearance) WC Doc. No. 04-223
Pursuant to 47 U.S.C. § 160(c) in the)
Omaha Metropolitan Statistical Area)

DECLARATION OF DON EBEN

1. My name is Don Eben. I am Director of Network Planning of McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"). My business address is 15 E. 5th Street, Suite 1600, Tulsa, OK 74103. I joined McLeodUSA in April 2001 and am responsible for Access Planning, Least Cost Routing, Network and Wholesale Provisioning. I have more than 11 years experience in Network Planning and Engineering with responsibilities including contract negotiations, cost management, and network architecture. I have factual knowledge relating to the information discussed in this Declaration.

2. I have been personally involved in negotiations with Qwest following the FCC's *Omaha Forbearance Order*, which resulted in our loss of access to unbundled network elements ("UNEs") at cost-based rates in nine¹ wire centers in the Omaha Metropolitan Statistical Area

¹ Qwest classifies one of these wire centers, Omaha Douglas, as a Tier 1 office that satisfies the Triennial Review Remand Order's ("TRRO") non-impairment thresholds for DS1, DS3, and dark fiber transport. See <http://www.qwest.com/wholesale/clecs/sgatswireline.html#nonimp>. Qwest classifies two of the wire centers, Omaha 84th St. and Omaha 90th St., as Tier 2 offices that satisfy the non-impairment thresholds for DS3 and dark fiber transport. *Id.* None of the nine wire centers are classified by Qwest as satisfying the FCC's non-impairment test for high-capacity loops. Therefore, absent the *Omaha Order*, high-capacity UNE loops and transport would be available in all nine of these wire centers, with the exception of high-capacity transport facilities from the Omaha Douglas wire center and DS3 and dark fiber facilities from the Omaha 84th St. and Omaha 90th St. wire centers.

(“MSA”) where the company has collocated equipment and customers.

3. The purpose of this declaration is to provide the factual support for McLeodUSA’s request that the Commission revoke the § 251(c)(3) forbearance granted to Qwest due to its failure to negotiate reasonable commercial alternatives to the DS0, DS1, and DS3 loops and transport UNEs affected by the *Omaha Forbearance Order*.

4. A detailed comparison of DS0, DS1, and DS3 UNE rates with special access rates (all using publicly available rates taken from Qwest’s tariffs, Statement of Generally Available Terms and Conditions, or “SGAT,” for the State of Nebraska, and proposed service offerings) is provided in the attached Exhibit 1. Highlights of the analysis are discussed below.²

I. Qwest’s Proposed Commercial Alternative for DS1 and DS3 UNEs

5. With regard to Qwest’s proposed commercial terms associated with alternatives to § 251(c)(3) DS1 and DS3 loop and transport UNEs, Qwest has only offered to replace UNEs with special access services from its FCC Tariff No. 1, at vastly higher rates for both recurring and non-recurring charges. This includes both the month-to-month special access rates and Regional Commitment Plan (“RCP”) rates.

6. For instance, the monthly recurring charge (“MRC”) for a Zone 1 DS1 UNE loop is \$74.88, plus a \$1.54 cross-connect charge, for a total MRC of \$76.42.³ In contrast, the Zone 1 MRC for a DS1 special access channel termination⁴ is \$165.00, plus a \$17.22 cross-connect

² Because Qwest has been granted Phase II special access pricing flexibility for all affected wire centers in the Omaha MSA, the relevant special access prices are Qwest’s Phase II pricing flexibility rates. *See* Qwest - FCC No. 1, Section 17.

³ *See* Exhibit 1 at 1 (sources provided in Exhibit 1 at 2).

⁴ Special access “channel terminations” are synonymous with UNE “loops.”

charge, for a total MRC of \$182.22.⁵ Stated differently, a DS1 special access circuit in Zone 1 is priced at \$105.80, or 138% more than the UNE rate.

7. Significantly, while the nine Omaha wire centers for which Qwest obtained forbearance are designated as Zone 1 for UNE loops, the same wire centers are predominantly designated as Zone 2 for special access circuits.⁶ As Table 1 below shows, five of the wire centers are designated as Zone 2 for special access, three are designated as Zone 3, and one of is designated as Zone 1:

Table 1 ⁷		
CLLI	ZONE	
	UNE	Special Access
OMAHNE78	1	2
OMAHNECE	1	2
OMAHNEFO	1	2
OMAHNEFW	1	3
OMAHNEHA	1	3
OMAHNEIZ	1	2
OMAHNENW	1	1
OMAHNEOS	1	3
OMAHNE90	1	2

8. Because the zone designations for UNEs and special access services differ for eight of the nine wire centers affected by the *Omaha Forbearance Order*, a comparison of UNE rates and special rates must be based on the specific rates that apply in each wire center. For example, in wire center CLLI OMAHANE78, a DS1 UNE loop is \$76.42, while a special access circuit is \$192.22 (this amount includes a \$175.00 Zone 2 channel termination charge and a

⁵ See Exhibit 1 at 1.

⁶ See also Exhibit 1 at 3.

⁷ *Id.*

\$17.22 cross-connect charge).⁸ Therefore, a DS1 special access circuit is \$115.90, or 151.53% more than the UNE rate in this wire center.

9. Moreover, as shown in Table 2 below, Qwest's special access DS1 rates have increased dramatically since it obtained Phase II special access pricing flexibility in the Omaha MSA. The rates are significantly higher than the price cap DS1 rates that would otherwise apply had it not received Phase II special access pricing relief:

Table 2								
Comparison of Qwest's DS1 Channel Termination Price Cap Rates With Phase II Pricing Flexibility Rates								
Month to Month Rates (No Term)			1 Year Term Monthly Rates			2 Year Term Monthly Rates		
Price Cap⁹	Price Flexibility¹⁰	% Increase	Price Cap	Price Flexibility	% Increase	Price Cap	Price Flexibility	% Increase
\$120.00	\$175.00	45.83%	\$116.40	\$166.00	42.61%	\$114.00	\$150.00	31.58%

10. With regard to Qwest's RCP, Qwest offers an optional pricing plan that allows special access DS1 and/or DS3 customers to receive 22% price reductions for committing to a minimum quantity of DS1 and/or DS3 circuits for a 48-month term.¹¹ The price reductions are taken from the month-to-month tariffed special access rates.¹² In order to receive the reductions for DS1 and DS3 service, a customer must commit to the RCP for a minimum of 90% of its total

⁸ See Exhibit 1 at 1.

⁹ See Qwest - FCC No. 1 Section 7.11.4, at 7-347 (same cite applies to the 1 and 2 year term price cap rates shown in Table 1).

¹⁰ See Qwest - FCC No. 1 Section 17.2. 11, at 17-91 (same cite applies to the 1 and 2 year term Phase II pricing flexibility rates shown in Table 1).

¹¹ See Qwest - FCC No. 1 Section 7.1.3, at 7-100.

¹² *Id.*

Qwest-provided in-service DS1 and DS3 service circuits, respectively, within Qwest's 14-state region.¹³

11. The RCP's 14-state footprint requirement extends outside of the nine wire centers affected by the *Omaha Forbearance Order* to areas where McLeodUSA is generally legally entitled to obtain facilities as UNEs. Because the RCP terms and conditions would lock McLeodUSA into a region-wide commitment level for special access circuits, McLeodUSA would face significant monetary penalties if those commitments were not satisfied.¹⁴

12. Qwest has offered RCP agreements for a number of years. In fact, McLeodUSA previously had an RCP agreement with Qwest. However, McLeodUSA does not currently have an RCP arrangement because Qwest's offering includes significant non-negotiable conditions and limitations. These provisions make it cost-prohibitive for McLeodUSA to use UNEs in markets where 251(c) high-capacity UNEs remain available after the *TRRO*.

13. However, even if McLeodUSA agreed to the RCP terms and conditions, the resulting discounted price for a DS1 loop would still be significantly higher than the UNE rate. For example, the "discounted" MRC for a Zone 1 DS1 loop would be \$145.92, which represents

¹³ *Id.*

¹⁴ For example, Section 7.1.3, at 7-106 of Qwest's tariff states that;

A discontinuance of all DS1 and DS3 Services under the RCP before the expiration date will result in the application of the Termination Liability as set forth in 7.1.8, following. The Termination Liability percentage is 50% for DS1 and DS3 Service under RCP. A decrease in the commitment level before the expiration date will also result in the application of the Termination Liability..... For example, to determine the Termination Liability in 7.1.8 for a decrease in the commitment level, multiply the number of decreased circuits by the average price, then multiply the number of months remaining in the RCP and then multiply the amount by 50%. For example, a decrease of 100 DS1 Service circuits multiplied by the average price of \$380 times 10 remaining months times 50% (Termination Liability) equals \$190,000.

a 91% increase in the MRC for DS1 circuits.¹⁵ For the five wire centers in special access Zone 2, the discounted RCP price is \$153.72, a 101% increase. The RCP price for the two Zone 3 wire center circuits would be \$161.52, a 111% increase.

14. McLeodUSA cannot accept the RCP and its volume commitment for the additional reason that in areas where Qwest is obligated to offer § 251(c)(3) UNEs, McLeodUSA has a number of existing special access circuits that it plans to convert to UNE circuits.

15. Following release of the *Omaha Forbearance Order* and as discussed below, McLeodUSA made a number of good faith attempts to negotiate more reasonable wholesale rates and terms for DS1 and DS3 loop and transport facilities than Qwest's special access and RCP offerings discussed herein. Qwest steadfastly refuses, however, to negotiate wholesale pricing for the affected wire centers that deviates from these offerings.

16. In January, 2006, after the *Omaha Forbearance Order* was issued, McLeodUSA requested negotiations for a commercial agreement with Qwest. The parties held a preliminary conference call on January 24, 2006. However, Qwest then repeatedly delayed further meetings, did not participate in scheduled conference calls, and failed to respond to email communications from McLeodUSA about the parties' negotiations. On April 7, 2006, McLeodUSA again sought Qwest's attention and noted its uncooperative attitude.¹⁶ Qwest responded on the same day, advising McLeodUSA that it expected to be in a position to resume negotiations the following week.

¹⁵ See Exhibit 1 at 4.

¹⁶ See Exhibit 2 at 2.

17. McLeodUSA received no further communications from Qwest until October 26, 2006, when I sent an email message seeking information about the status of the parties' negotiations.¹⁷ Qwest again replied on the same day, stating that it would make the appropriate inquiries to continue negotiations. Although meetings and e-mail exchanges continued through December 6, 2006, no subsequent meetings between the companies' respective negotiators have taken place.

18. In a January 22, 2007 *ex parte* filed with the Commission, Qwest alleged that McLeodUSA had refused to meet with Qwest to negotiate. For the reasons discussed herein, Qwest's claim is incorrect. In addition, Qwest failed to disclose that it previously made clear that it was not willing to negotiate various terms related to its RCP term and volume commitments.

19. Qwest's assertion that it is willing to meet with McLeodUSA, when viewed in the context of its actual conduct, demonstrates to McLeodUSA that market incentives are not prompting Qwest to make its DS1 and DS3 facilities available at competitive rates and terms. If the marketplace for network elements were competitive, Qwest would not be treating negotiations so dismissively and would be offering reasonable wholesale pricing to McLeodUSA.

¹⁷ *Id.* at 1.

II. Qwest's Proposed Commercial Alternative For DS0 UNEs and Associated Demands

20. Qwest's proposed commercial wholesale terms for alternatives to § 251(c)(3) DS0 UNEs are likewise unacceptable. Qwest sent McLeodUSA a package on May 17, 2007 that included a "Commercial DS0 Loop Agreement" and the following additional three documents, all of which purport to apply to the State of Nebraska: (1) "Omaha Forbearance Order Amendment" to the parties' interconnection agreement; (2) *TRO/TRRO* amendment to the parties' interconnection agreement; and (3) amendment to the parties' existing Qwest Platform Plus ("QPP") agreement.¹⁸

21. On June 13, 2007, McLeodUSA responded to Qwest's May 17, 2007 correspondence. With regard to the proposed "Omaha Forbearance Order Amendment" provision stating that "CLEC will pay all applicable non-recurring charges associated with each conversion" from UNEs to alternate arrangements for affected DS0, DS1, and DS3 loops,¹⁹ McLeodUSA suggested that since the parties recently agreed to settle their differences about the appropriate non-recurring charge for purposes of their *TRO/TRRO* amendment, the same non-recurring charge apply in the context of the "Omaha Forbearance Order Amendment."²⁰

22. In this letter, McLeodUSA also renewed its request for Qwest to provide a price list for the affected elements based on Qwest's Section 271 obligations to offer them at just and

¹⁸ See Letter from Larry Christensen, Qwest, to Sherry Krewett, McLeodUSA, at 1 (dated May 17, 2007), attached hereto as Exhibit 3.

¹⁹ Proposed Omaha Forbearance Order Amendment, Attachment 1, Section 1.3, attached hereto as Exhibit 3 (Appendix 1) page 2 of 70.

²⁰ See Letter from William Haas, McLeodUSA, to Larry Christensen, Qwest, at 1 (dated June 13, 2007) (addressing Qwest's proposed "Omaha Forbearance Order Amendment", and stating that since the conversion work for loops affected by both the *TRO/TRRO* and the *Omaha Order* was identical, it made sense for the same non-recurring charge to apply to both situations), attached hereto as Exhibit 4.

reasonable prices. McLeodUSA stated it was willing to consider any reasonable starting point for the negotiation of Section 271 pricing.”²¹

23. On June 20, 2007, Qwest responded to McLeodUSA’s letter regarding the proposed “Omaha Forbearance Order Amendment” and stated that it would agree to apply a reduced non-recurring per-circuit rate if McLeodUSA executed all of the proposed amendments. Notably, Qwest stated that it wished for all amendments to be completed as a package. To date, Qwest has not responded to McLeodUSA’s June 13, 2007 letter regarding the request for 271 pricing.

24. McLeodUSA has reviewed Qwest’s Commercial DS0 Loop Agreement and has uncovered numerous unjust and unreasonable terms. For instance, the agreement specifically exempts Qwest from wholesale performance standards that would otherwise apply, including Section 271 performance metrics.²²

25. Furthermore, Qwest’s proposed two-wire and four-wire DS0 loop rates are approximately 30% more than DS0 UNE rates, and the agreement requires that McLeodUSA stipulate that these rates are “just and reasonable.”²³ However, this is not the case. For example,

²¹ *Id.*

²² See Qwest Proposed Master Services Agreement, Section 4.6 (“the parties agree that services provided under this Agreement are not subject to the Qwest Wholesale Change Management Process (“CMP”), Qwest’s Performance Indications (“PID”), Performance Assurance Plan (“PAP”) or any other wholesale quality standards, liquidated damages, and remedies with respect to services provided pursuant to this Agreement”), attached hereto as Exhibit 3 (Appendix 4) at page 44 of 70 (Section 4.6).

²³ See Exhibit 3 (Appendix 4) at page 44 of 70 (Section 6.1). Qwest’s DS0 Loop Facility offering is attached to Qwest’s Master Service Agreement as “Service Exhibit 1.” According to Qwest’s website, only one CLEC (TCG Omaha) has executed what appears to be Qwest’s template agreement. See <http://www.qwest.com/wholesale/clecs/commercialagreements.html>.

Qwest assesses a DS0 rate that is approximately 30% lower if the CLEC combines Qwest's DS0 loop with Qwest's local switching.²⁴

26. McLeodUSA believes that Qwest is able to extract a 30% premium for stand alone DS0 loops because CLECs have no viable wholesale alternatives for last mile loops. Therefore, Qwest has no market incentive to make competitive DS0 wholesale rates available.

III. Qwest's Proposed Non-Recurring Charges

27. Both the rates and terms associated with Qwest's wholesale non-recurring charges for high capacity facilities are unreasonable. For example, Qwest assesses a non-recurring charge of \$626.50 (including cross connect) to install each high-capacity DS1 circuit, as compared with a non-recurring charge of \$136.15 (including cross connect) for a comparable DS1 UNE loop.²⁵ This is a increase of \$490.35, which is approximately 360%.

28. While Qwest recently showed an apparent willingness to reduce its non-recurring charges for conversions from UNEs to special access for existing circuits, its offer was contingent on McLeodUSA agreeing to unrelated and unacceptable conditions.

²⁴ Compare monthly two and four-wire loop rates in Exhibit 3 (Appendix 4 - Qwest Commercial DS0 Agreement) at page 69 of 70 (monthly two and four-wire loop rates are \$15.71 and \$30.84, respectively), with Exhibit 3 (Appendix 3 - Amendment to QPP Agreement) at page 42 of 70 (monthly two and four-wire loop rates are \$12.14 and \$23.83, respectively).

²⁵ See Exhibit 1 at 1 (sources provided in Exhibit 1 at 2).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed July 20 2007


Don Eben

Declaration of Don Eben

Exhibit 1

OMAHA FORBEARANCE RATE COMPARISON

DETAILED COST ELEMENTS

SERVICE TYPE	UNE RATES		SPECIAL ACCESS RATES PHASE II PRICING FLEXIBILITY		DS0 LOOP COMMERCIAL PRICING		QPP OMAHA FORBEARANCE	
	MRC	NRC	MRC	NRC	MRC	NRC	MRC	NRC
DS0 LOOP								
DS0 LOOP - ZONE 1	\$12.14	\$55.27	\$38.00	\$155.00	\$15.71	\$55.27	\$12.14	
DS0 LOOP - ZONE 2	\$28.11	\$55.27	\$38.00	\$155.00	\$15.71	\$55.27	\$12.14	
DS0 LOOP - ZONE 3	\$62.50	\$55.27	\$38.00	\$155.00	\$15.71	\$55.27	\$12.14	
CROSS CONNECT	\$0.44	\$0.00	\$4.02	\$467.44				
DS1 LOOP - ZONE 1	\$74.88	\$136.15	\$165.00	\$313.25				
DS1 LOOP - ZONE 2	\$78.63	\$136.15	\$175.00	\$313.25				
DS1 LOOP - ZONE 3	\$83.57	\$136.15	\$185.00	\$313.25				
CROSS CONNECT	\$1.54	\$0.00	\$17.22	\$313.25				
TRANSPORT PER TERM								
0-8 MILES	\$34.12	\$274.40	\$92.00					
8-25 MILES	\$34.95	\$274.40	\$92.00					
25-50 MILES	\$36.80	\$274.40	\$92.00					
OVER 50 MILES	\$35.44	\$274.40	\$92.00					
TRANSPORT PER MILE								
0-8 MILES	\$3.25		\$16.00					
8-25 MILES	\$3.28		\$16.00					
25-50 MILES	\$1.86		\$16.00					
OVER 50 MILES	\$0.79		\$16.00					
DS3 LOOP - ZONE 1	\$791.17	\$136.15	\$2,200.00	\$313.25				
DS3 LOOP - ZONE 2	\$912.30	\$136.15	\$2,200.00	\$313.25				
DS3 LOOP - ZONE 3	\$1,017.23	\$136.15	\$2,200.00	\$313.25				
DS3 CROSS CONNECT	\$15.72		\$52.50	\$329.00				
TRANSPORT								
0-8 MILES	\$219.44	\$274.40	\$650.00	\$305.00				
8-25 MILES	\$222.65	\$274.40	\$650.00	\$305.00				
25-50 MILES	\$204.76	\$274.40	\$650.00	\$305.00				
OVER 50 MILES	\$216.42	\$274.40	\$650.00	\$305.00				
TRANSPORT PER MILE								
0-8 MILES	\$54.79		\$85.00					
8-25 MILES	\$17.32		\$85.00					
25-50 MILES	\$21.47		\$85.00					
OVER 50 MILES	\$14.86		\$85.00					
NOTE:	TRANSPORT NRC ONLY APPLIES WHEN CHANNEL TERMINATION IS NOT INSTALLED							
	MRC MEANS MONTHLY RECURRING CHARGE							
	NRC MEANS NON-RECURRING CHARGE							

OMAHA FORBEARANCE RATE COMPARISON
 DETAILED COST ELEMENTS WITH SOURCE REFERENCES

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 Exhibit 1
 Page 2 of 4

SERVICE TYPE	UNE RATES		SOURCE	SPECIAL ACCESS RATES PHASE II PRICING FLEXIBILITY		SOURCE	DS0 LOOP COMMERCIAL PRICING		SOURCE	QPP OMAHA FORBEARANCE		SOURCE
	MRC	NRC		MRC	NRC		MRC	NRC		MRC	NRC	
DS0 LOOP - ZONE 1	\$12.14	\$55.27	SGAT - 9.2.1.1.1. NRC 9.2.4.	\$38.00	\$155.00	QWEST FCC NO 1 - 17.2.4.A. PAGE 17-10 NRC - SAME	\$15.71	\$55.27	COMMERCIAL DS0 LOOP NE PRICE SHEET 109.2.	\$12.14	QPP EXHIBIT A RATE PAGE 3/15/2006 - 109.2.1.	
DS0 LOOP - ZONE 2	\$28.11	\$55.27		\$38.00	\$155.00		\$15.71	\$55.27		\$12.14		
DS0 LOOP - ZONE 3	\$62.50	\$55.27		\$38.00	\$155.00		\$15.71	\$55.27		\$12.14		
CROSS CONNECT	\$0.44	\$0.00	SGAT - 9.1.1.	\$4.02	\$467.44	QWEST FCC NO 1 - 21.5.2 A. PAGE 21-40 NRC - SAME						
DS1 LOOP - ZONE 1	\$74.88	\$136.15	SGAT - 9.2.3.3.1-3 NRC 9.2.5.	\$165.00	\$313.25	QWEST FCC NO 1 - 17.2.11 A. 1. PAGE 17-91 NRC - 17.2.11 PAGE 17.90						
DS1 LOOP - ZONE 2	\$78.63	\$136.15		\$175.00	\$313.25							
DS1 LOOP - ZONE 3	\$83.57	\$136.15		\$185.00	\$313.25							
CROSS CONNECT	\$1.54	\$0.00	SGAT - 9.1.2.	\$17.22	\$313.25	QWEST FCC NO 1 - 21.5.2 A. PAGE 21-40 NRC - SAME						
TRANSPORT PER TERM			SGAT - 9.6.2.1-4 NRC 9.6.2.			QWEST FCC NO 1 - 17.2.11. C.1.A. PAGE 17-98-98.1						
0-8 MILES	\$34.12	\$274.40		\$92.00								
8-25 MILES	\$34.95	\$274.40		\$92.00								
25-50 MILES	\$36.80	\$274.40		\$92.00								
OVER 50 MILES	\$35.44	\$274.40		\$92.00								
TRANSPORT PER MILE			SGAT - 9.6.2.1-4			QWEST FCC NO 1 - 17.2.11. C.1.A. PAGE 17-98-98.1						
0-8 MILES	\$3.25			\$16.00								
8-25 MILES	\$3.28			\$16.00								
25-50 MILES	\$1.86			\$16.00								
OVER 50 MILES	\$0.79			\$16.00								
DS3 LOOP - ZONE 1	\$791.17	\$136.15	SGAT - 9.2.3.4.1-3 NRC 9.2.6.	\$2,200.00	\$313.25	QWEST FCC NO 1 - 17.2.12.A. PAGE 17-122 - NRC 17.2.12 PAGE 17-121						
DS3 LOOP - ZONE 2	\$912.30	\$136.15		\$2,200.00	\$313.25							
DS3 LOOP - ZONE 3	\$1,017.23	\$136.15		\$2,200.00	\$313.25							
DS3 CROSS CONNECT	\$15.72		SGAT - 9.1.3.	\$52.50	\$329.00	QWEST FCC NO 1 - 21.5.2 A. PAGE 21-40 NRC - SAME						
TRANSPORT			SGAT - 9.6.3.1-4 NRC 9.6.3.			QWEST FCC NO 1 - 17.2.12.A. PAGE 17-129-130						
0-8 MILES	\$219.44	\$274.40		\$650.00	\$305.00							
8-25 MILES	\$222.65	\$274.40		\$650.00	\$305.00							
25-50 MILES	\$204.76	\$274.40		\$650.00	\$305.00							
OVER 50 MILES	\$216.42	\$274.40		\$650.00	\$305.00							
TRANSPORT PER MILE			SGAT - 9.6.3.1-4			QWEST FCC NO 1 - 17.2.12.A. PAGE 17-129-130						
0-8 MILES	\$54.79			\$85.00								
8-25 MILES	\$17.32			\$85.00								
25-50 MILES	\$21.47			\$85.00								
OVER 50 MILES	\$14.86			\$85.00								
NOTE: SGAT - QWEST NEBRASKA 5TH AMENDED 2/16/2005												
TRANSPORT NRC ONLY APPLIES WHEN CHANNEL TERMINATION IS NOT INSTALLED												
MRC MEANS MONTHLY RECURRING CHARGE												
NRC MEANS NON-RECURRING CHARGE												

OMAHA FORBEARANCE RATE COMPARISON
 ZONE ANALYSIS

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CLLI	ZONE		DS1 PRICE		DS1 DIFF	
	UNE	SPECIAL ACCESS	UNE (1)	SPECIAL ACCESS	\$ DIFF.	% DIFF.
OMAHNE78	1	2	\$76.42	\$192.22	\$115.80	152%
OMAHNECE	1	2	\$76.42	\$192.22	\$115.80	152%
OMAHNEFO	1	2	\$76.42	\$192.22	\$115.80	152%
OMAHNEFW	1	3	\$76.42	\$202.22	\$125.80	165%
OMAHNEHA	1	3	\$76.42	\$202.22	\$125.80	165%
OMAHNEIZ	1	2	\$76.42	\$192.22	\$115.80	152%
OMAHNENW	1	1	\$76.42	\$182.22	\$105.80	138%
OMAHNEOS	1	3	\$76.42	\$202.22	\$125.80	165%
OMAHNE90	1	2	\$76.42	\$192.22	\$115.80	152%
NOTE: - ZONE INFORMATION FOUND IN INDUSTRY DATABASE PROVIDED BY NECA						
- UNE PRICE INCLUDES ZONE 1 DS1 UNE LOOP AND CROSS CONNECT CHARGES						
- SPECIAL ACCESS PRICE INCLUDES DS1 CHANNEL TERMINATION AND CROSS CONNECT CHARGES FOR THE ZONE REFERENCED						

Declaration of Don Eben

Exhibit 2

-----Original Message-----

From: Eben, Don M. [mailto:Don.Eben@mcleodusa.com]
Sent: Thursday, October 26, 2006 2:26 PM
To: Logan, Mike; Dinwiddie, Clifford .; Koecher, Derek A
Cc: Flippo, Sean A.
Subject: RE: McLeod Commercial agreement discussions

Mike,

McLeod has seen absolutely not response from Qwest since the e-mail below regarding negotiating a Commercial Agreement. Please let me know what the status and the next steps are on this negotiation.
Don

-----Original Message-----

From: Eben, Don M. [mailto:Don.Eben@mcleodusa.com]
Sent: Friday, April 07, 2006 4:47 PM
To: Dinwiddie, Clifford .; Koecher, Derek A; Griffin, Chris
Cc: Flippo, Sean A.; Lechtenberg, Todd M.; Logan, Mike
Subject: RE: McLeod Commercial agreement discussions

Cliff,

It has been over 1 month since your last response. This is completely unacceptable, McLeod is trying to negotiate a commercial agreement in good faith and Qwest is being completely unresponsive.

Derek/Chris,

What needs to happen to get these negotiations started again.

Don

Declaration of Don Eben

Exhibit 3



Larry Christensen
Director – Interconnection Agreements
1801 California Street, Room 2430
Denver, CO 80202
303-896-4686
larry.christensen@qwest.com

May 17, 2007

Sherry Krewett, Vendor/Contract Manager
McLeodUSA Telecom
First Place Tower
15 E. 5th St., Ste. 1500
Tulsa, Oklahoma 74103
918.419.3496 (office)
email: sherry.krewett@mcleodusa.com

Dear Ms. Krewett,

Attached for your company's review and execution, pursuant to the terms and conditions of your current Interconnection Agreement ("ICA") addressing changes in law, are amendments that incorporate the FCC's *Omaha Forbearance Order* ("OFO"), the TRO/TRRO Amendment into the ICA and an amendment to the QPP Agreement. In addition, Qwest has included a Qwest Commercial DS0 Loop agreement to execute since these UNE DS0 services are no longer offered in nine Omaha Wire Centers as part of the ICA. As you are undoubtedly aware, this is not the first transmittal of these documents to your company. However, Qwest did not push execution of these documents due to the appeal of the OFO by certain CLECs. Now, given the U.S. Court of Appeals for the D.C. Circuit's rejection of CLEC challenges to the OFO in *Qwest Corp. v. FCC* in late March of this year, and given the FCC's mandate that CLECs must not only modify their ICAs (including completing any change of law process) but also transition facilities covered by its forbearance ruling within six months of the effective date of its Order to alternative service arrangements (a deadline which your company has missed by over a year), there is no basis for any further delay in the execution of these documents [See, *Omaha Forbearance Order*, ¶ 74]. Therefore, if Qwest does not receive executed originals of the attached documents within thirty (30) days, Qwest will be left with no option but to initiate applicable dispute resolution procedures.

Attached for your signature are amendments that incorporate the FCC's *Omaha Forbearance Order* ("OFO"), the TRO/TRRO Amendment, an amendment to the QPP Agreement and the Qwest Commercial DS0 Loop as referenced above. Please print out one copy of each document for your files and three (3) copies of the signature pages only from each document. Sign and return all three signature pages of each document to Steve Dea at the address shown below:

Mr. Steve Dea, Manager
Qwest Corporation
1801 California Street, Suite 2410
Denver, CO 80202
303-965-3029

Upon execution by Qwest, one executed signature page of each document will be returned to you, Qwest will retain one of each fully executed document and one of each fully executed document will be filed with the Nebraska Public Service Commission, as required

Sincerely,
Larry Christensen

DECLARATION OF DON EBEN

EXHIBIT 3

APPENDIX 1

OMAHA FORBEARANCE ORDER AMENDMENT

**Omaha Forbearance Order Amendment
to the Interconnection Agreement between
Qwest Corporation
and
McLeodUSA Telecommunications Services, Inc.
for the State of Nebraska**

This is an Amendment ("Amendment") to incorporate the determinations of the FCC Omaha Forbearance Order into the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and McLeodUSA Telecommunications Services, Inc. ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

RECITALS

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the state of Nebraska which was approved by the Nebraska Public Service Commission ("Commission") on April 14, 1999; and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its *Memorandum Opinion and Order on the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, FCC 05-170, WC Docket No. 04-223, (effective September 16, 2005) ("OFO")*; and

WHEREAS, the OFO, materially modifies Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs in certain wire centers in Omaha, Nebraska; and

WHEREAS, the Parties wish to amend the Agreement to comply with this Decision hereby agree to do so under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms.

To the extent applicable, the Agreement is hereby amended by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 to this Amendment, attached hereto and incorporated herein by this reference.

II. Limitations.

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the OFO, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of OFO or concerning whether the OFO should be changed, vacated, dismissed, stayed or modified.

III. Conflicts.

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

IV. Scope.

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the execution date.

V. Effective Date.

This Amendment shall be deemed effective upon approval by the Commission, except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date. The Parties agree to implement the provisions of this Amendment upon execution ("execution date").

VI. Further Amendments.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized 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.

VII. Entire Agreement.

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**McLeodUSA Telecommunications
Services, Inc.**

Qwest Corporation

Signature

Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director- Interconnection Agreements

Title

Date

Date

ATTACHMENT 1

1.0 Unbundled Network Element (UNE) Forbearance

1.1 Pursuant to the Omaha Forbearance Order (OFO), Qwest is no longer required to, and will not provide UNE access according to section 251(c)(3) of the Telecommunications Act of 1996 in the nine Wire Centers located in Omaha, Nebraska as set forth in Section 1.2 below. The following UNEs are impacted: DS0 loops including FTTH-FTTC, DS1 and DS3 loops, including Sub-loops and Network Interface Devices, and dedicated transport network elements, including dark fiber.

1.2 As of the Execution Date of this Amendment CLEC shall not order, and Qwest will not provide, access to UNEs identified in Section 1.1 pursuant to Section 251 of the Act in the following Wire Centers: Omaha Douglas, Omaha Iazard Street, Omaha 90th Street, Omaha Fort Street, Omaha Fowler Street, Omaha O Street, Omaha 78th Street, Omaha 135th Street, and Omaha 156th Street ("Forbearance Wire Centers"). Qwest shall provide unbundled DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 or Forbearance Wire Center, or if neither Wire Center is a Tier 1 or Forbearance Wire Center. Qwest shall provide unbundled DS3 or dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center that is not a Forbearance Wire Center.

1.3 Conversion

1.3.1 Conversion period for embedded base of DS0, DS1 and DS3 Unbundled Loops. CLEC will convert its DS0, DS1, and DS3 Unbundled Loops (embedded customer base) where the loop is provided in the Forbearance Wire Centers, to an alternative arrangement within ninety (90) calendar days after the execution date of this Amendment. CLEC will pay all applicable nonrecurring charges associated with each conversion.

1.3.2 Conversion period for DS0, DS1 and DS3 UDITs. CLEC will convert any UDIT facilities, where those facilities are not in compliance with Section 1.2, within ninety (90) calendar days after the execution date of this Amendment. CLEC will pay all applicable nonrecurring charges associated with each conversion.

1.3.3 Enhanced Extended Loop (EEL) -- The terms and conditions of Section 1.3.1 and 1.3.2 shall apply.

1.3.4 Conversion period for dark fiber (UDF). CLEC will convert its UDF, where the UDF is not in compliance with Section 1.2, to an alternate arrangement within one hundred eighty (180) calendar days after the execution date of this Amendment. CLEC will pay all applicable nonrecurring charges associated with any alternative arrangement. Qwest account representatives will work with CLEC on a plan to identify impacted UDF and to convert any existing UDF facilities to other alternative Qwest products or services, if CLEC so desires.

1.4 Failure to Convert

1.4.1 DS0 Unbundled Loop If CLEC does not convert any or all of its impacted DS0 Unbundled Loops within the prescribed conversion period, all remaining DS0 Unbundled Loops will be billed at a premium

ATTACHMENT 1

rate equal to the rate of the Commercial DS0 Loop Facility. The billing will be based on the number of working circuits on the last working day of each month and the rate difference will appear as a separate element on the CLEC bill at the summary level.

1.4.2 DS1 and DS3 Unbundled Loop and UDIT If CLEC does not convert any or all of its impacted DS1 and DS3 loop and/or transport circuits within the prescribed conversion period, Qwest will convert the facilities to month to month service arrangements in Qwest's Special Access Tariff.

1.4.3 Dark fiber If CLEC does not convert any or all non-compliant dark fiber to alternative service arrangements, Qwest will, or maintains the right to, begin the disconnection process of CLEC dark fiber.

1.5 Effective Bill Date - Regardless of the effective date of this amendment, the effective billing date for rate changes associated with the embedded base of forborne UNEs is March 17, 2006, the effective date as ordered by the FCC in the Omaha Forbearance Order.

DECLARATION OF DON EBEN

EXHIBIT 3

APPENDIX 2

TRO/TRRO AMENDMENT

**Triennial Review Order and Triennial Review Remand Order
("TRO/TRRO") Amendment
to the Interconnection Agreement between
Qwest Corporation
and
McLeodUSA Telecommunications Services, Inc.
for the State of Nebraska**

This is an Amendment ("Amendment") to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and McLeodUSA Telecommunications Services, Inc. ("CLEC"). Qwest and CLEC shall be known jointly as the "Parties".

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the State of Nebraska which was approved by the Nebraska Public Service Commission on April 14, 1999 as referenced in Docket / Order No. C-2023; and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in 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

WHEREAS, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act; and

WHEREAS, the TRO and TRRO Decision, individually and together ("Decisions") materially modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs; and

WHEREAS, the Parties wish to amend the Agreement to comply with the Decisions hereby agree to do so under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms.

To the extent applicable, the Agreement is hereby amended by deleting certain UNEs or by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 and Exhibit A to this Amendment, attached hereto and incorporated herein by this reference.

II. Limitations.

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Decisions, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decisions should be changed, vacated, dismissed, stayed or modified.

III. Conflicts.

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

IV. Scope.

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the execution date.

V. Effective Date.

This Amendment shall be deemed effective upon approval by the Commission, except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date. The Parties agree to implement the provisions of this Amendment upon execution ("execution date").

VI. Further Amendments.

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized 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.

VII. Entire Agreement.

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**McLeodUSA Telecommunications
Services, Inc**

Qwest Corporation

Signature

Signature

Name Printed/Typed

L.T. Christensen

Name Printed/Typed

Title

Director- Interconnection Agreements

Title

Date

Date

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1.0 Definitions

"Business Line" means a Qwest-owned switched access line used to serve a business customer, whether by Qwest itself or by CLEC that leases the line from Qwest. The number of Business Lines in a Wire Center shall equal the sum of all Qwest business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Qwest end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Dark Fiber" is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

"Dedicated Transport" is Qwest transmission facilities between wire centers or switches owned by Qwest, or between wire centers or switches owned by Qwest and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

"Fiber-based Collocator" means any carrier, unaffiliated with Qwest, that maintains a Collocation arrangement in a Qwest Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Qwest Wire Center premises; and (3) is owned by a party other than Qwest or any affiliate of Qwest, except as set forth in this paragraph. Dark fiber obtained from Qwest on an indefeasible right of use basis shall be treated as non-Qwest fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this paragraph, the term "affiliate" is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

"Interexchange Service" means telecommunications service between stations in different exchange areas. Cf. Modification of Final Judgment, § IV(K), *reprinted in United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Long Distance Service" (see "Interexchange Service").

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"Mobile Wireless Service" means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the service offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

"Non-impaired Wire Center" – A Non-impaired Wire Center is a Wire Center that meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops and §51.319(a)(5)(i) for DS3 Loops. Non-impaired Wire Centers also include Tier 1 and Tier 2 Wire Centers as defined in §51.319(e)(3) and subject to the limitations of §51.319(e)(2)(ii)(A) for DS1 Dedicated Transport, §51.319(e)(2)(iii)(A) for DS3 Dedicated Transport and §51.319(e)(2)(iv)(A) for Dark Fiber Transport.

"Route" is a transmission path between one of Qwest's Wire Centers or switches and another of Qwest's Wire Centers or Switches. A Route between two (2) points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch "X"). Transmission paths between identical end points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

"Triennial Review Remand Order" The Triennial Review Remand Order is the Commission's Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005).

"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under CLEC's Agreement and under this Amendment. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

"Wire center" 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 this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

"Tier 1 Wire Centers" means those Qwest Wire Centers that contain at least four Fiber-based Collocators, at least 38,000 Business Lines, or both. Tier 1 Wire Centers also are those Qwest tandem Switching locations that have no line-side Switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

"Tier 2 Wire Centers" means those Qwest Wire Centers that are not Tier 1 Wire Centers, but contain at least 3 Fiber-based Collocators, at least 24,000 Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

"Tier 3 Wire Centers" means those Qwest Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

2.0 Unbundled Network Elements (UNE) General

2.1 CLEC's Interconnection Agreement may include terms and conditions for certain Network Elements that Qwest is no longer required to offer on an unbundled basis pursuant to Section 251 of the Act. The FCC determined in its Decisions, that certain Unbundled Network Elements no longer satisfy the FCC's impairment test, and as a result, Qwest is no longer obligated to offer to CLEC those Network Elements on an unbundled basis pursuant to Section 251 of the Act. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution date of this Amendment, CLEC shall not order, and Qwest will not provide, the following Network Elements on an unbundled basis pursuant to Section 251 of the Act:

2.2.1 Unbundled Loops

- a) Certain DS1 Loops subject to the requirements of Section 3.0 following
- b) Certain DS3 Loops subject to the requirements of Section 3.0 following
- c) OCn Loops
- d) FTTH & FTTC Loops subject to the requirements of Section 3.1.6 following
- e) Dark Fiber Loops subject to the requirements of Section 3.1.5 following
- f) Hybrid Loops (non-copper distribution Loops) except as identified in Section 3.1.7 following
- g) Line Sharing
- h) Feeder-Sub-Loop
- i) Shared Distribution Loops

2.2.2 Transport

- a) E-UDIT (Extended Unbundled Dedicated Interoffice Transport); Transport from a CLEC's Premises to a Qwest Wire Center;
- b) E-UDF (Extended Unbundled Dark Fiber); Transport from a CLEC's Premises to a Qwest Wire Center;
- c) OCn UDIT; including Remote Node/Remote Port and SONET add/drop multiplexing
- d) UDIT and UDF as a part of a Meet-Point arrangement;
- e) Certain DS1 Transport (UDIT) subject to the requirements of Section 4.0

following

- f) Certain DS3 Transport (UDIT) subject to the requirements of Section 4.0 following
- g) Certain Dark Fiber Transport (UDF-IOF) subject to the requirements of Section 4.1.7 following
- h) Multiplexing associated with UDIT and Loop/Mux Combo

2.2.3 Unbundled Switching

- a) Packet Switching
- b) Tandem Switching
- c) Mass Market Switching, including UNE-P and related services as identified in Section 2.2.3.1
- d) Enterprise Local Switching, including UNE-P and related services as identified in Section 2.2.3.1
- e) Signaling Networks (stand alone)

2.2.3.1 Related services

- a) Customized Routing
- b) Signaling
- c) AIN Database Services
- d) Line Information Database (LIDB)
- e) 8XX Database Services
- f) InterNetwork Calling Name (ICNAM)
- g) Local Number Portability (LNP) Database
- h) Shared Transport

2.2.4 Transition

2.2.4.1 Transition plans for embedded Network Elements identified in the above lists are identified in the following sections.

2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

2.4 UNEs shall be obtained solely for the provision of Telecommunications Services and only to the extent allowed by law.

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2.5 UNEs shall only be obtained for the provision of Telecommunications Services, which do not include telecommunications utilized by CLEC for its own administrative use.

2.6 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

2.7 If CLEC accesses and uses a UNE consistently with Sections 2.4, 2.5 and 2.6, CLEC may provide any Telecommunications Services over the same UNE.

2.8 To submit an order to obtain a high-capacity loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 3.1.1 and 3.1.2, and that a requested unbundled DS1, DS3 or dark fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Sections 4.1.1, 4.1.2 and 4.1.7.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.

2.8.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-impairment thresholds referred to in Section 2.8. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in CLEC's Interconnection Agreement.

2.8.2 If it is determined by CLEC and Qwest that CLEC's access to or use of UNEs is inconsistent with Existing Rules, except due to change in law, CLEC has thirty (30) calendar Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Qwest alternate service arrangements. CLEC is also responsible for all non-recurring charges associated with such conversions.

2.8.3 When CLEC submits an order to convert a special access circuit to a UNE and that circuit has previously been exempt from the special access surcharge pursuant to 47 CFR 69.115, CLEC shall document in its certification when and how the circuit was modified to permit interconnection of the circuit with a local exchange subscriber line.

2.8.4 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC. Thirty (30) Days after notification from

Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.

2.9 Service Eligibility Criteria

2.9.1 The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport).

2.9.1.1 Except as otherwise provided in this Section 2.9.1.1, Qwest shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

2.9.1.2 CLEC must certify that the following Service Eligibility Criteria are satisfied to: (1) convert a Special Access Circuit to a high capacity EEL, (2) to obtain a new high capacity EEL; or (3) to obtain at UNE pricing any portion of a Commingled circuit that includes a high capacity Loop and transport facility or service. Such certification shall be in accordance with all of the following Sections.

2.9.1.2.1 State Certification. CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.9.1.2.2 Per Circuit Criteria. The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

2.9.1.2.3 Telephone Number Assignment. Each circuit to be provided to each End User Customer will be assigned a local telephone number prior to the provision of service over that circuit. This requires that each DS1 circuit must have at least one (1) local telephone number and each DS3 circuit has at least twenty-eight (28) local telephone numbers. The origination and termination of local voice traffic on each local telephone number assigned to a circuit shall not include a toll charge

and shall not require dialing special digits beyond those normally required for a local voice call.

2.9.1.2.4 911 or E911. Each circuit to be provided to each End User Customer will have 911 or E911 capability prior to the provision of service over that circuit.

2.9.1.2.5 Collocation.

2.9.1.2.5.1 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location;

2.9.1.2.5.2 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is located at the third party's premises within the same LATA as the End User Customer's premises, when Qwest is the collocator; and

2.9.1.2.5.3 When a DS1 or DS3 EEL Loop is connected to a multiplexed facility, the multiplexed facility must be terminated in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location.

2.9.1.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Where CLEC does not arrange for a meaningful exchange of traffic, those arrangements cannot be attributed towards satisfaction of this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA as the End User Customer served by the circuit. For each twenty-four (24) DS1 circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA as the End User Customer served by the circuit.

2.9.1.2.6.1 Calling Party Number. Each circuit to be provided to each End User Customer will be served by an Interconnection trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 LIS trunk over which CLEC will transmit the Calling Party Number in connection with

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calls exchanged over the trunk. If the Calling Party Number is not exchanged over an Interconnection trunk, that trunk shall not be counted towards meeting this criteria.

2.9.1.2.7 End Office Switch. Each circuit to be provided to each End User Customer will be served by an End Office Switch capable of Switching local voice traffic. CLEC must certify that the Switching equipment is either registered in the LERG as a Class 5 Switch or that it can switch local voice traffic.

2.9.1.3 CLEC must provide certification to Qwest through a certification letter, or other mutually agreed upon communication, that each individual high capacity loop in combination, or Commingled, with a Qwest-provided high capacity transport facility or service, meets the Service Eligibility Criteria set forth above before Qwest will provision or convert the high capacity facility in combination or Commingled.

2.9.1.4 CLEC's high capacity combination or Commingled facility Service Eligibility shall remain valid only so long as CLEC continues to meet the Service Eligibility Criteria set forth above. If CLEC's Service Eligibility on a given high capacity combination or Commingled facility is no longer valid, CLEC must submit a service order converting the facility to the appropriate Private Line/Special Access service within thirty (30) Days.

2.9.1.5 Service Eligibility Audits. In order to confirm reasonable compliance with these requirements, Qwest may perform Service Eligibility Audits of CLEC's records. Service Eligibility Audits shall be performed in accordance with the following guidelines:

2.9.1.5.1 Qwest may, upon thirty (30) Days written notice to CLEC that has purchased high capacity combination and Commingled facilities, conduct a Service Eligibility Audit to ascertain whether those high capacity facilities were eligible for UNE treatment at the time of Provisioning or conversion and on an ongoing basis thereafter.

2.9.1.5.2 CLEC shall make reasonable efforts to cooperate with any Service Eligibility Audit by Qwest and shall maintain and provide Qwest with relevant records (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that CLEC's high capacity combination and Commingled facilities meet the Service Eligibility Criteria.

2.9.1.5.3 An independent auditor hired and paid for by Qwest shall perform any Service Eligibility Audits, provided, however, that if a Service Eligibility Audit reveals that CLEC's high capacity combination and Commingled facility circuit(s) do not meet or have not met the Service Eligibility Criteria, then CLEC shall reimburse Qwest for the cost of the audit. To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Criteria,

Qwest shall reimburse CLEC for its costs associated with the Service Eligibility Audit.

2.9.1.5.4 An independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

2.9.1.5.5 Qwest shall not exercise its Service Eligibility Audit rights with respect to CLEC (excluding Affiliates), more than once in any calendar year, unless an audit finds non-compliance. If a Service Eligibility Audit does find non-compliance, Qwest shall not exercise its Service Eligibility Audit rights for sixty (60) Days following that audit, and if any subsequent Service Eligibility Audit does not find non-compliance, then Qwest shall not exercise its Service Eligibility Audit rights for the remainder of the calendar year.

2.9.1.5.6 At the same time that Qwest provides notice of a Service Eligibility Audit to CLEC under this paragraph, Qwest shall send a copy of the notice to the Federal Communications Commission.

2.9.1.5.7 Service Eligibility Audits conducted by Qwest for the purpose of determining compliance with Service Eligibility Criteria shall not effect or in any way limit any audit or Dispute Resolution rights that Qwest may have pursuant to other provisions of this Agreement.

2.9.1.5.8 Qwest shall not use any other audit rights it may have under this Agreement to audit for compliance with the Service Eligibility Criteria of this Section. Qwest shall not require a Service Eligibility Audit as a prior prerequisite to Provisioning combination and Commingled facilities.

2.9.1.5.9 CLEC shall maintain appropriate records to support its Service Eligibility Criteria. However, CLEC has no obligation to keep any records that it does not keep in the ordinary course of its business.

2.9.1.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits to Private Line/Special Access circuits and CLEC must true-up any difference in payments within thirty (30) days.

3.0 Unbundled Loop

3.1 Unbundled Loops are available pursuant to CLEC's Agreement and the following terms and conditions.

3.1.1 DS1 Unbundled Loops. Subject to the cap described in Section 3.1.1.1, Qwest shall provide CLEC with non-discriminatory access to a DS1 loop on an unbundled basis to any building not served by a Wire Center with at least 60,000

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Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that Wire Center.

3.1.1.1 Cap on Unbundled DS1 Loop Circuits. CLEC may obtain a maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

3.1.1.2 Transition period for DS1 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.1 or 3.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. Where Qwest is not required to provide unbundled DS1 loops pursuant to Sections 3.1.1 or 3.1.1.1, CLEC may not obtain new DS1 loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first 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 of March 11, 2005 on the first or second bill cycle following the contract execution date.

3.1.2 DS3 Unbundled Loops. Subject to the cap described in Section 3.1.2.1, Qwest shall provide CLEC with non-discriminatory access to a DS3 loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

3.1.2.1 Cap on Unbundled DS3 Loop Circuits. CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled loops.

3.1.2.2 Transition period for DS3 loop circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.2 or 3.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element. Where Qwest is not required to provide unbundled DS3 loops pursuant to Sections 3.1.2 or 3.1.2.1, CLEC may not obtain new DS3

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loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

3.1.2.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

3.1.3 Non-Impaired Services – DS1 and DS3 Loops

3.1.3.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 loop leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the loop for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

3.1.3.2 Failure To Convert Non-Impaired Services – DS1 and DS3 Loops. Absent CLEC Transition of DS1 and DS3 Loops within ninety (90) Days after the execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

3.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

3.1.5 Dark Fiber Loops Including Fiber Sub-loop. Qwest is not required to provide CLEC with access to a Dark Fiber Loop on an unbundled basis except for UDF-MTE Subloop below. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

3.1.5.1 Transition period for Dark Fiber Loop circuits. For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any Dark Fiber Loop UNEs that a CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. CLEC may not obtain new Dark Fiber Loops as Unbundled Network Elements. Qwest and CLEC will work together to identify those circuits impacted.

3.1.5.2 Failure To Convert Non-Impaired Network Elements - Dark Fiber Loops including Fiber Sub-loop. Absent CLEC transition of Dark Fiber Loops as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Loops.

3.1.5.3 UDF MTE Subloop begins at or near an MTE to provide access to MTE premises wiring.

3.1.5.3.1 Access to Dark Fiber MTE Subloops at or near an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. The termination and placement of CLEC fiber facilities at an MTE is solely the responsibility of CLEC. CLEC is responsible for all negotiations with the End User Customer and or premises owner for such placement of CLEC facilities.

3.1.5.3.2 Termination at an MTE. CLEC shall access the UDF MTE Subloop on the MTE premises at a technically feasible point if possible. If access is not technically feasible on the MTE premises, then CLEC may request access to UDF MTE Subloop at a technically feasible point near the MTE premises. Qwest will prepare and submit to CLEC a quote along with the original Field Verification Quote Preparation form (FVQP) within the interval set forth in Exhibit C. Quotes are on an Individual Case Basis (ICB) and will include costs and an interval in accordance within the interval set forth in the Agreement.

3.1.5.3.3 A complex IRI is used to determine if a UDF MTE Subloop is available to gain access to network infrastructure within an MTE. Quotes are on an Individual Case Basis (ICB) and may include costs in addition to any installation charges specified in Exhibit A. of your Agreement.

3.1.6 FTTH and FTTC Loops. For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's Premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's Premises.

3.1.6.1 FTTH/FTTC New Builds. Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's Premises

that had not previously been served by any loop facility prior to October 2, 2003.

3.1.6.2 FTTH/FTTC Overbuilds. Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH/FTTC loop parallel to, or in replacement of, an existing copper loop facility:

3.1.6.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's Premises after deploying the FTTH/FTTC loop to such Premises, and (ii) upon request provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition on an Individual Case Basis. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 3.1.6.2.1 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 3.1.6.3 below.

3.1.6.2.2 In the event Qwest, in accordance with the provisions of Section 3.1.6.3 below, retires the existing copper loop connected to the End User Customer's Premises, Qwest shall provide access, as an Unbundled Network Element, over the FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site (www.qwest.com/disclosures); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90th) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9th) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

3.1.6.4 Handling of embedded FTTH/FTTC Loops. All embedded CLEC services over FTTH/FTTC Loops in place prior to the signature on this

Amendment will be 'grandfathered' subject to re-classification upon change of service.

3.1.7 Hybrid Loops. A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

3.1.7.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, but not DSL, Qwest shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Qwest's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.7.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

3.1.7.2.1 Provide non-discriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or

3.1.7.2.2 Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis.

3.1.8 Subloop Unbundling. An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3.

3.1.8.1 Qwest's obligation to construct a Single Point of Interface (SPOI) is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE. In addition, Qwest shall have an obligation to construct a SPOI only when CLEC indicates that it intends

to place an order for access to an unbundled Subloop Network Element via a SPOI.

3.1.8.2 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, refers to creation of a cross connect field and does not constitute Collocation. The terms and conditions of Collocation do not apply to Cross-Connect Collocation if required at or near an MTE.

3.1.8.3 Retention of Embedded Services – Feeder Subloops. All embedded CLEC services over Feeder Subloops in place prior to the signature on this Amendment will be “grandfathered” subject to re-classification upon any modification to or disconnection of the service. Recurring charge rates effective prior to the signature on this amendment will remain in place. No new requests will be accepted for Feeder Subloop subsequent to signature on this Amendment.

3.1.9 Line Sharing. Qwest shall not be required to provide Line Sharing unless the Agreement has been amended with a Qwest Commercial Line Sharing Amendment.

3.1.10 Shared Distribution Loop. Qwest shall not be required to provide Shared Distribution Loop unless the Agreement has been amended with a Qwest Commercial Shared Distribution Loop Amendment.

4.0 Unbundled Dedicated Interoffice Transport (UDIT)

4.0.1 Qwest is not obligated to provide CLEC with unbundled access to dedicated transport that does not connect a pair of Qwest Wire Centers.

4.0.2 All transport services, when combined with high capacity Loops, are subject to the Service Eligibility Criteria as outlined in Section 2.9 of this Amendment.

4.1 UDIT is available pursuant to CLEC’s Agreement and the following terms and conditions.

4.1.1 DS1 UDIT. Qwest shall unbundle DS1 transport between any pair of Qwest Wire Centers except where, through application of “Tier” classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Qwest must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

4.1.1.1 On Routes for which no unbundling obligation for DS3 Dedicated Transport circuits exists but for which DS1 Dedicated Transport is available on an unbundled basis, CLEC may obtain a maximum of ten (10) unbundled DS1 Dedicated Transport circuits.”

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4.1.1.2 Transition period for DS1 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.1 or 4.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS1 transport pursuant to Sections 4.1.1 or 4.1.1.1, CLEC may not obtain new DS1 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.2 DS3 UDIT - Qwest shall unbundle DS3 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.2.1 CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated transport is available on an unbundled basis.

4.1.2.2 Transition period for DS3 transport circuits. For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.2 or 4.1.2.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS3 transport pursuant to Sections 4.1.2 or 4.1.2.1, CLEC may not obtain new DS3 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

4.1.2.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.3 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

4.1.4 Non-Impaired Services – DS1 and DS3 UDIT

4.1.4.1 Use after March 10, 2006. For any non-impaired DS1 or DS3 UDIT leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to the later of March 11, 2006 or the installation date of the transport for the difference between the rate for the UNE and the rate of Qwest's month-to-month alternative service arrangement in Qwest's Special Access Tariff until CLEC transitions the UNE to an alternative service arrangement or disconnects the UNE.

4.1.4.2 Failure To Convert Non-Impaired Services – DS1 and DS3 UDIT. Absent CLEC transition of DS1 and DS3 Transport within ninety (90) Days after the execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNES and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.5 Failure To Convert Non-Impaired Services – OCn UDIT. Absent CLEC transition of OCn Transport within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNES and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.6 Failure To Convert Non-Impaired Services – DS1 and DS3 E-UDIT and M-UDIT. Absent CLEC transition of DS1 and DS3 E-UDIT and M-UDIT within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNES and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

4.1.7 Unbundled Dark Fiber (UDF) IOF

4.1.7.1 Dedicated dark fiber transport shall be made available to CLEC on an unbundled basis as set forth in the Interconnection Agreement and as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

4.1.7.1.1 Qwest shall unbundle dark fiber transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications defined in Section 1.0 of this Amendment, both Wire

Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.7.1.2 Transition period for dark fiber transport circuits. For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any dark fiber dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.7.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled dark fiber transport pursuant to Section 4.1.7.1.1, CLEC may not obtain new dark fiber transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

4.1.7.1.3 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.7.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

4.1.7.1.5 Failure To Convert Non-Impaired Services – UDF-IOF. Absent CLEC Transition of UDF, as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Facilities.

4.1.8 E-UDF and M-UDF (Meet Point Billed-UDF) Transition Language. Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, any ASRs for Extended Unbundled Dark Fiber (E-UDF) or M-UDF (Meet Point UDF). Qwest account representatives will work with CLECs on a plan to convert any existing E-UDF or M-UDF to other alternative Qwest products or services, if CLEC so desires.

4.1.8.1 Transition period for dark fiber transport circuits. For an eighteen (18) month period beginning on the effective date of the Triennial Review Remand Order, any E-UDF and M-UDF that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.8, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the E-UDF and M-UDF element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective

date of the Triennial Review Remand Order, for that element. Where Qwest is not required to provide unbundled dark fiber E-UDF and M-UDF pursuant to Section 4.1.8, CLEC may not obtain E-UDF and M-UDF as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted.

4.1.8.2 Billing. The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.8.3 Failure To Convert Non-Impaired Networks Elements – E-UDF and M-UDF. Absent CLEC Transition E-UDF and M-UDF as of September 10, 2006, Qwest will begin or maintain the right to begin, disconnect process of Dark Fiber Facilities.

5.0 Unbundled Local Switching

5.1 Transition of Unbundled Local circuit Switching, including UNE-P Services

5.1.1 DS0 Capacity (Mass Market)

5.1.1.1 Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

5.1.1.2 Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit Switching element to an alternative arrangement within twelve (12) months of the effective date of the Triennial Review Remand Order.

5.1.1.3 Notwithstanding Section 5.1.1.2, for a twelve (12) month period from the effective date of the Triennial Review Remand Order, Qwest shall provide access to local circuit Switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit Switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or (B) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. CLEC may not obtain new local Switching as an unbundled network element. Qwest and CLEC will work together to identify those impacted accounts.

5.1.1.4 Qwest shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit Switching is required to be

made available pursuant to Section 5.1.1.3. These elements are defined as follows:

5.1.1.4.1 Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

5.1.1.4.2 Call-related databases.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems

5.1.1.4.3 Shared transport.

5.1.1.5 Use after March 10, 2006 - For any UNE-P POTS or UNE-P Centrex 21 leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month resale service alternatives identified in this Section 5.1.1.6.2. All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX leased by CLEC from Qwest after March 10, 2006 are subject to back billing to March 11, 2006 for the difference between the rate for the UNE and a rate equal to the Qwest month-to-month Local Exchange Resale service.

5.1.1.6 Failure to Convert Non-Impaired Networks Elements – Mass Market Switching

5.1.1.6.1 Mass Market Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.1.6.2 UNE-P POTS & UNE-P Centrex 21: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Business Measured Resale services, e.g. Class of Service (COS) LMB. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Business Resale services, e.g. COS 1FB. CLEC is subject to back billing for the difference between the rates for the UNE-P and rates for the Qwest Resale Service to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

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5.1.1.6.3 All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services to the equivalent Qwest Local Exchange Resale services. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.6.4 Any UNE-P services with Line Splitting: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will convert services as described above. Line Splitting will be removed from any UNE-P services with Line Splitting.

5.1.2 Enterprise Switching. DS1 Capacity and above (i.e., enterprise market) Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

5.1.2.1 Transition for DS1 Capacity Unbundled Switching; including UNE-P - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, LSRs for Unbundled Local Switching at the DS1 or above capacity. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Local Switching at the DS1 or above capacity to other available Qwest products or services, if CLEC so desires. CLEC will submit complete, error-free LSRs to convert or disconnect any existing Unbundled Local Switching at the DS1 or above capacity with Due Dates within ninety (90) Days of the Execution Date of this Amendment.

5.1.2.2 Failure to Convert DS1 Capacity Unbundled Switching; including UNE-P.

5.1.2.2.1 Enterprise Unbundled Switching – Stand Alone: Absent CLEC Transition within ninety (90) Days after the execution of this Amendment, Qwest will disconnect any remaining services on or after this date.

5.1.2.2.2 Enterprise Unbundled Switching purchased as a part of UNE-P: Absent CLEC Transition pursuant to the timeline above in 5.1.2.1, Qwest will convert services to the equivalent month to month Resale arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Resale arrangement to the ninety-first (91st) day. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.3 Signaling Networks

5.1.3.1 Transition for Signaling Networks - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, ASRs for Unbundled Signaling Network Elements. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Signaling Network Elements to other available Qwest products or services. CLEC will submit complete, error-free ASRs to convert or disconnect any existing Unbundled Signaling Network Elements with Due Dates that are within ninety (90) Days of the Execution Date of this Amendment. Qwest and CLEC will work together to identify those network elements.

5.1.3.2 Failure to Convert Non-Impaired Network Elements – Signaling Networks. Absent CLEC Transition of Signaling Networks within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91st day. CLEC is also responsible for all non-recurring charges associated with such conversions.

6.0 Unbundled Network Element Combinations

6.1 Enhanced Extended Loop (EEL)

6.1.1 EEL is available pursuant to CLEC's Agreement, the relevant loop and transport terms and conditions of this amendment and the following terms and conditions.

6.1.1.1 The "Significant Amount of Local Exchange Traffic" eligibility criteria for EEL is replaced by the Service Eligibility Criteria described in Section 2.9, including the collocation requirement of Section 2.9.1.2.5.

6.1.1.2 CLEC EEL certification process is replaced by the Certification process described in Sections 2.9.1.3.

6.1.1.3 EEL Audit provisions are replaced by the Service Eligibility Audit process described in Sections 2.9.1.5.

6.1.1.4 Service Eligibility Criteria in Section 2.9 apply to combinations of high capacity (DS1 and DS3) loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs (e.g., high capacity loops attached to special access transport). CLEC cannot utilize combinations of Unbundled Network Elements that include DS1 or DS3 Unbundled Loops and DS1 or DS3 unbundled dedicated interoffice transport (UDIT) to create high capacity EELs unless CLEC certifies to Qwest that the EELs meet the Service Eligibility Criteria in Section 2.9.

ATTACHMENT 1

6.1.1.5 Transition for EEL – CLEC must verify that all embedded EEL meet the new Service Eligibility Criteria. Qwest account representatives will work with CLEC on a plan to convert any non-compliant EEL to other service arrangements.

6.1.1.6 Use after March 10, 2006. For any non-compliant EELs leased by CLEC from Qwest after March 10, 2006, CLEC is subject to back billing in accordance with the back billing terms for non-impaired DS1 and DS3 loops and UDIT, as applicable, set forth in Sections 3.1.3.1 and 4.1.4.1.

6.1.1.7 Failure to Convert Non-Compliant EEL. Absent CLEC Transition of non-compliant EEL within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

6.2 Loop-Mux Combination (LMC)

6.2.1 Description

6.2.1.1 Loop-mux combination (LMC) is an unbundled Loop, as defined by CLEC's Agreement as amended, (referred to in this Section as an LMC Loop) Commingled with a private line (PLT), or with a special access (SA), Tariffed DS1 or DS3 multiplexed facility with no interoffice transport. The PLT/SA multiplexed facility is provided as either an Interconnection Tie Pair (ITP) or Expanded Interconnection Termination (EICT) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.1.2 LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

6.2.1.3 Qwest offers the LMC Loop as a billing conversion or as new provisioning.

6.2.2 Terms and conditions

6.2.2.1 An Extended Enhanced Loop (EEL) may be commingled with the PLT/SA multiplexed facility.

6.2.2.2 LMC Loops will be provisioned where existing facilities are available.

6.2.2.3 The PLT/SA DS1 or DS3 multiplexed facility must terminate in a Collocation.

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6.2.2.4 The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.

6.2.2.5 The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.2.6 A rearrangement nonrecurring charge may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop; or on some Private Line/Special Access circuits when coupled with a Conversion as Specified Request to convert to LMC Loop.

6.2.3 Rate Elements

6.2.3.1 The LMC Loop is the Loop connection between the End User Customer Premises and the multiplexer in the serving Wire Center where CLEC is Collocated. LMC Loop is available in DS0 and DS1. Recurring and non-recurring charges apply

6.2.3.2 DS0 Mux Low Side Channelization. LMC DS0 channel cards are required for each DS0 LMC Loop connected to a 1/0 LMC multiplexer. Channel cards are available for analog loop start, ground start, reverse battery, and no signaling. See channel performance for recurring charges as set forth in Exhibit A.

6.2.3.3 Nonrecurring charges for billing conversions to LMC Loops and Rearrangement of existing LMC Loops are set forth in Exhibit A.

6.2.4 Ordering Process

6.2.4.1 Ordering processes for LMC Loop(s) are contained in this Agreement and in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:

6.2.4.1.1 Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.

6.2.4.1.2 Step 2: Obtain billing account number (BAN) through account team representative.

6.2.4.1.3 Step 3: Allow two (2) to three (3) weeks from Qwest's receipt of a completed questionnaire for accurate loading of LMC rates to the Qwest billing system.

6.2.4.1.4 Step 4: After account team notification, place LMC Loop orders via an LSR.

6.2.4.2 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization (POA) as set forth in this Agreement.

6.2.4.3 Standard service intervals for LMC Loops are in the Service Interval Guide (SIG) available at www.qwest.com/wholesale.

6.2.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA or EDI interfaces or through facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

6.2.5 Billing

6.2.5.1 Qwest shall provide CLEC, on a monthly basis, within seven to ten (7 to 10) calendar Days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual End User Customer sub-account information.

6.2.6 Maintenance and Repair

6.2.6.1 Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.

6.3 Commingling

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Network Elements offered pursuant to Section 271.

6.3.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or

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UNE Combination shares part of Qwest's network with Access Services.

6.3.3 When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a unique provisioning process is not required for the UNE or service due to the commingling. Performance measurements and/or remedies are not applicable to the total commingled arrangement but do apply to each facility or service ordered within the commingled arrangement. Work performed by Qwest to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

6.3.4 Qwest will not combine or Commingle services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

6.3.5 Services are available for Commingling only in the manner in which they are provided in Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

6.3.6 Entrance Facilities and mid-span meet SPOI obtained pursuant to the Local Interconnection section of the Agreement are not available for Commingling.

6.3.7 CLEC may request Qwest to commingle DS1 or DS0 analog voice grade unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Qwest's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 6.2 of this Amendment.

7.0 Ratcheting

7.1 To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

7.2 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

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8.0 Routine Network Modifications

8.1 Qwest shall make all routine network modifications to unbundled loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Qwest shall perform these routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.2 A routine network modification is an activity that Qwest regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Qwest ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

McLeodUSA Telecommunications Services, Inc.

**TRO and TRRO Exhibit A
 Transition Rates
 Nebraska***

Amendment	Select Traffic Type	Options	Notes
9.0 Unbundled Network Elements (UNEs)			
9.2 Unbundled Loops			
9.2.3 Digital Capable Loops			
9.2.3.3.4	DS1 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)		
9.2.3.3.4.1	Zone 1		*
9.2.3.3.4.2	Zone 2		*
9.2.3.3.4.3	Zone 3		*
9.2.3.4.4	DS3 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)		
9.2.3.4.4.1	Zone 1		*
9.2.3.4.4.2	Zone 2		*
9.2.3.4.4.3	Zone 3		*
9.2.8	Private Line / Special Access to Unbundled Loop Conversion (as is)		\$30.87 1
9.8 Unbundled Dedicated Interoffice Transport (UDIT)			
9.8.2.5	DS1 UDIT Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates. (Effective 3/11/05 thru 3/10/06)		
9.8.2.5.1	Over 0 to 8 Miles	\$5.12 \$0.48	* *
9.8.2.5.2	Over 8 to 25 Miles	\$5.24 \$0.48	* *
9.8.2.5.3	Over 25 to 50 Miles	\$5.52 \$0.28	* *
9.8.2.5.4	Over 50 Miles	\$5.32 \$0.12	* *
9.8.3.5	DS3 UDIT Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 3/10/06)		
9.8.3.5.1	Over 0 to 8 Miles	\$32.89 \$8.22	* *
9.8.3.5.2	Over 8 to 25 Miles	\$33.40 \$2.60	* *
9.8.3.5.3	Over 25 to 50 Miles	\$30.71 \$3.22	* *
9.8.3.5.4	Over 50 Miles	\$32.48 \$2.23	* *
9.8.12	Private Line / Special Access to UDIT Conversion (as is)		\$118.99 1
9.7 Unbundled Dark Fiber (UDF)			
9.7.4 UDF Single Strand			
9.7.4.1.6	UDF-IOF - Single Strand Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 9/10/06)		
9.7.4.1.6.1	Fiber Transport, per Strand / Mile	\$7.94	*
9.7.4.1.6.2	Termination, Fixed, per Strand / Office	\$0.59	*
9.7.4.1.6.3	Fiber Cross-Connect, per Strand	\$0.33	*
9.7.4.2	UDF - Loop - Single Strand Transitional Rate for all wire centers (Effective 3/11/05 thru 9/10/06)		
9.7.4.2.3	Fiber Loop, per Strand / Route	\$82.31	**
9.7.4.2.4	Termination, Fixed, per Strand / Office	\$4.73	**
9.7.4.2.5	Termination, Fixed, per Strand / Premise	\$3.83	**
9.7.4.2.6	Fiber Cross-Connect, per Strand	\$2.50	**
9.7.5 UDF - per Pair			
9.7.5.1.6	UDF-IOF - Per Pair Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates (Effective 3/11/05 thru 9/10/06)		
9.7.5.1.6.1	Fiber Transport, per Pair / Mile	\$10.32	*
9.7.5.1.6.2	Termination, Fixed per Pair / Office / Termination	\$1.17	*
9.7.5.1.6.3	Fiber Cross-Connect, per Pair / Office	\$0.65	*
9.7.5.2	UDF - Loop - Per Pair Transitional Rate for all wire centers (Effective 3/11/05 thru 9/10/06)		
9.7.5.2.3	Fiber Loop, per Pair / Route	\$80.99	**
9.7.5.2.4	Termination, Fixed, per Pair / Office	\$9.45	**
9.7.5.2.5	Termination, Fixed, per Pair / Premise	\$7.65	**
9.7.5.2.6	Fiber Cross-Connect, per Pair / Office	\$4.98	**
9.7.7	UDF MTE Subloop	ICB	ICB 3 3

McLeodUSA Telecommunications Services, Inc.

**TRO and TRRO Exhibit A
 Transition Rates
 Nebraska***

9.11 Local Switching						
9.11.1	Ports					
9.11.1.1	Analog Line Side Port Transitional Rate (REC rates effective 3/11/05 thru 3/10/06)					
9.11.1.1.1	First Port	\$3.47			***	
9.11.1.1.2	Each Additional Port	\$3.47			***	
9.11.1.2	Digital Line Side Port Transitional Rate (Supporting BRI ISDN) (REC rates effective 3/11/05 thru 3/10/06)					
9.11.1.2.1	First Port	\$9.58			***	
9.11.1.2.2	Each Additional Port	\$9.58			***	
9.11.1.3	Digital Trunk Ports					
9.11.1.3.5	PBX / DID Trunk Port, per DS1 Transitional Rate (REC rate effective 3/11/05 thru 3/10/06)	\$4.00			***	
9.11.1.4	DS0 Analog Trunk Port Transitional Rate (REC rates effective 3/11/05 thru 3/10/06)					
9.11.1.4.1	First Port	\$17.06			***	
9.11.1.4.2	Each Additional Port	\$17.06			***	
9.23	UNE Combinations					
9.23.6	UNE Combinations -Loop Mux Combo (LMC)					
9.23.6.4.6	DS1 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)					
9.23.6.4.6.1	Zone 1	\$11.23			*	
9.23.6.4.6.2	Zone 2	\$11.79			*	
9.23.6.4.6.3	Zone 3	\$12.54			*	
9.23.6.5	Private Line / Special Access to LMC Conversion (as is)			\$30.87		A
9.23.7	Enhanced Extended Loop (EEL)					
9.23.7.3.6	DS1 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)					
9.23.7.3.6.1	Zone 1	\$11.23			*	
9.23.7.3.6.2	Zone 2	\$11.79			*	
9.23.7.3.6.3	Zone 3	\$12.54			*	
9.23.7.4.6	DS3 Transitional Rate 15% incremental adjustment applies in addition to Monthly Rate for non-impaired wire centers, (effective 3/11/05 thru 3/10/06)					
9.23.7.4.6.1	Zone 1	\$118.68			*	
9.23.7.4.6.2	Zone 2	\$136.85			*	
9.23.7.4.6.3	Zone 3	\$152.58			*	
9.23.7.6	Private Line / Special Access to EEL Conversion (as is)			\$30.87		A
9.23.7.8	EEL Transport					
9.23.7.8.2.5	DS1 Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates. (Effective 3/11/05 thru 3/10/06)					
9.23.7.8.2.5.1	Over 0 to 8 Miles	\$5.12	\$0.49		*	*
9.23.7.8.2.5.2	Over 8 to 25 Miles	\$5.24	\$0.49		*	*
9.23.7.8.2.5.3	Over 25 to 50 Miles	\$5.52	\$0.28		*	*
9.23.7.8.2.5.4	Over 50 Miles	\$5.32	\$0.12		*	*
9.23.7.8.3.5	DS3 Transitional Rate 15% incremental adjustment between non-impaired wire centers, in addition to Monthly Rates. (Effective 3/11/05 thru 3/10/06)					
9.23.7.8.3.5.1	Over 0 to 8 Miles	\$32.89	\$8.22		*	*
9.23.7.8.3.5.2	Over 8 to 25 Miles	\$33.40	\$2.60		*	*
9.23.7.8.3.5.3	Over 25 to 50 Miles	\$30.71	\$3.22		*	*
9.23.7.8.3.5.4	Over 50 Miles	\$32.46	\$2.23		*	*

NOTES:

A: Cost Docket C-2516 / PI-49 Effective 6/7/02

* Transitional Rate Increment developed using 15% of the existing rate, per CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05

**TRO and TRRO Exhibit A
Transition Rates
Nebraska***



** Rate includes 15% increase authorized in CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05
*** Rate includes \$1.00 per Port increase authorized in CC Docket Nos. 01-338 & 04-313 Order on Remand (released 2/4/05), effective 3/11/05

[1] Rates not addressed in Cost Docket (estimated TELRIC)
[3] ICB, Individually Case Basis pricing