

CARRIER-TO-CARRIER AGREEMENT CHECKLIST

INSTRUCTIONS: Please complete all applicable parts of this form and submit it with related materials when filing a carrier-to-carrier agreement pursuant to 47 U.S.C. 252 and OAR 860-016-0000 et al. The Commission will utilize the information contained in this form to determine how to process the filing.

1. PARTIES	<i>Requesting Carrier</i>	<i>Affected Carrier</i>	
Name:	_____	Qwest Corporation	Don Mason
Address:	McLeodUSA	Director-Interconnect	Qwest Corporation
	6400 C Street SW	1801 California St., Ste. 2401	421 S.W. Oak, Ste. 810
	Cedar Rapids, IA 52406-3177	Denver, CO 80202	Portland, OR 97204

2. PRIMARY CONTACT PERSON FOR PROCESSING INFORMATION:

Name:	Jamaica L. Wilson	Phone:	(503) 727-2081
Address:	Perkins Coie LLP	Fax:	(503) 727-2222
	1211 S.W. Fifth Avenue, Suite 1500	E-Mail:	jamaicawilson@perkinscoie.com
	Portland, OR 97204		

3. TYPE OF FILING (Check all that apply. For example, parties seeking to adopt a previously approved agreement with new negotiated amendments should check both "Adoption" and "Amendment" categories.)

- Adoption:** Adopts interconnection agreement previously approved by the Commission.
Parties to prior agreement _____ & _____
Approved in Docket ARB _____, Order No(s). _____
Does filing adopt amendments to base agreement previously approved by the Commission?
 NO
 YES, approved in Docket ARB _____, Order No(s). _____
- New Agreement:** Seeks approval of new negotiated agreement.
Does this filing replace an agreement between the same parties that was previously approved by the Commission?
 NO
 YES, approved in Docket ARB _____, Order No(s). _____
- Amendment:** Amends an existing carrier-to-carrier agreement.
If the original agreement was negotiated, has it been approved by Commission?
 NO, decision pending in Docket ARB _____
 YES, approved in Docket ARB 302(1), 302(2-4), 302(5), Order No(s). 01-241, 01-732, 02-079
If original agreement was an adoption, what was its docket number? Docket ARB 250
- Other:** Please explain.
ARB 302(6+7) Order No. 02-150

October 1, 2002

VIA HAND DELIVERY

Ms. Cherie Powers
Administrative Specialist
Oregon Public Utility Commission
Suite 215
550 Capitol Street NE
Salem, OR 97301-2551

**Re: Proof of Service of Materials Filed on September 4, 2002 in
Docket ARB 302**

EXPEDITED TREATMENT REQUESTED

Dear Ms. Powers:

This letter is to advise you that today I served the materials that Qwest filed on September 4, 2002 in this docket (checklist, cover letter, and amendment to the interconnection agreement) on the CLEC's representative, as you requested. A certificate of service demonstrating completion of service is attached.

This is not the first communication Qwest has had with this CLEC regarding this issue. As we discussed yesterday, Qwest previously communicated with the CLEC regarding the filing of this agreement in other states. On August 22, 2002, Qwest sent the CLEC a letter notifying the CLEC that this agreement would be publicly filed in other jurisdictions and posted on the Qwest wholesale Web site for review by any interested parties. The CLEC was provided with an opportunity to object to that filing and posting. Qwest also followed up with telephone calls to the CLEC. The CLEC has not objected to either the public filing of the amendment or the corresponding publication of the agreement on Qwest's wholesale Web site.

Given that Qwest has completed service as you requested, I trust that you will now post the materials to the Commission's Web site to provide the public notice of the filing as described in OAR 860-016-0020. Qwest expected the posting and notice to occur on September 4, the date of filing. Qwest did not receive any indication that the Commission did not post the materials to the Commission's Web site until

Ms. Cherie Powers
October 1, 2002
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September 24, 2002, twenty days after the filing. Given that Qwest did not receive timely notice of the purported deficiencies in the filings, and that the CLEC has already received adequate prior notice of the filing of this agreement in other jurisdictions without voicing an objection, **Qwest requests that the Commission establish a 14-day time period for public comment, as permitted by OAR 860-016-0020(5).**

Thank you for your attention to this matter. If you have any questions, please contact me or Larry Reichman immediately.

Very truly yours,

Jay Nusbaum

JPN:kh

Cc: Lauraine Harding, McLeodUSA, Inc.
Randy Rings, McLeodUSA, Inc.
Todd Lundy
Alex Duarte
Don Mason
Larry Reichman

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CERTIFICATE OF SERVICE

ARB 302

I hereby certify that on this day I served the foregoing **Carrier-to-Carrier Agreement Checklist, Confidential Settlement Agreement, Facility Decommissioning Agreement, Confidential Billing Settlement Agreement, Confidential Letter Agreement (Escalation), and Cover Letter**, which Qwest filed with the Public Utility Commission of Oregon on September 4, 2002, on the following persons by causing to be mailed a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said persons at the following addresses and deposited in the post office at Portland, Oregon on this day:

**Lauraine Harding
McLeodUSA, Inc.
6400 C Street SW
Cedar Rapids, IA 52406-3177**

**Randy Rings
McLeodUSA, Inc.
6400 C Street SW
Cedar Rapids, IA 52406-3177**

DATED: October 1, 2002.

PERKINS COIE LLP

By _____
Lawrence Reichman, OSB No. 86083
Jay P. Nusbaum, OSB No. 96378

Attorneys for Qwest Corporation

Jay Nusbaum
PHONE: 503.727.2025
EMAIL: nusbj@perkinscoie.com

September 4, 2002

VIA HAND DELIVERY

Ms. Cherie Powers
Oregon Public Utility Commission
Suite 215
550 Capitol Street NE
Salem, OR 97310

**Re: Public Utility Commission of Oregon Docket ARB 302,
Confidential Settlement Agreement, Facility Decommissioning
Agreement, Confidential Billing Settlement Agreement,
Confidential Letter Agreement (Escalation) between Qwest
Corporation and McLeodUSA**

Dear Ms. Powers:

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest Corporation ("Qwest") hereby submits three copies of the enclosed fully executed negotiated agreements, Confidential Settlement Agreement, Facility Decommissioning Agreement, Confidential Billing Settlement Agreement, Confidential Letter Agreement (Escalation) between Qwest Corporation and McLeodUSA, for filing with and approval by the Commission. Given the multi-state nature of these agreements, the originals are not available for filing. Also enclosed is a completed Carrier-to-Carrier Agreement Checklist, which includes the names of the parties, a contact person, and the type of filing. The electronic version was electronically filed on September 4, 2002.

Qwest has previously submitted hundreds of agreements with CLECs in Oregon for approval by the Commission under Section 252(e)(2). In addition to the

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filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252.

Earlier this year, questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. Qwest promptly brought this matter to the Commission's attention in a letter dated March 11, 2002, including providing copies of our answer to the DOC complaint, and copies of those of the 11 identified agreements that also had applicability in Oregon. Qwest invited the Commission to review the agreements for itself. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

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

Older agreements provide a more complicated case. Qwest naturally has been concerned about second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of its good faith. Specifically, Qwest has reviewed all of our currently effective agreements with CLECs in Oregon that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by

agreement, Commission order, or otherwise. Qwest has applied its broad new review standard to all such agreements and provided them here.

Qwest is petitioning the Commission to approve the attached agreements such that, to the extent any active provisions of such agreement relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). For the Commission's benefit, Qwest has marked, highlighted or bracketed those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, Commission order, or otherwise, and are thus subject to filing and approval under Section 252. We are not asking the Commission to decide whether these agreements, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The Commission need simply approve those provisions relating to Section 251(b) or (c) services under its Section 252(e) procedures, and Qwest will make the going forward provisions related to Section 251(b) or (c) available under Section 251(i). Thus, the Commission does not at this time need to reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not.

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

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

Qwest requests that the Commission approve the agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that these agreements need not have been filed in the event of an enforcement action in this area.

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Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). Provisions that settle past carrier-specific disputes, that do not relate to Section 251, or that are no longer in effect are not subject to Section 251(i) and this offering.

As a further sign of good faith, Qwest will also be posting these agreements on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Oregon of the interconnection-related terms and conditions. This will facilitate the ability of CLECs to request terms and conditions, subject to the Commission's decision approving the agreement filed here.

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

Thank you for your attention to this matter.

Sincerely yours,

Jay Nusbaum

JPN:jpn
Enclosure

Cc: Don Mason
Alex Duarte
Todd Lundy
Larry Reichman

FACILITY DECOMMISSIONING AGREEMENT

THIS FACILITY DECOMMISSIONING AGREEMENT ("Agreement"), is made and entered into as of this 20th day of December, 2001 (the "Effective Date"), between Qwest Corporation ("Qwest") and McLeodUSA Inc. ("McLeodUSA") (Qwest and McLeodUSA being sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, Qwest, a local incumbent exchange provider, and McLeodUSA, a competitive local exchange provider, are parties to a certain interconnection agreement (the "Interconnection Agreement"), executed pursuant to sections 251 and 252 of the Federal Telecommunications Act of 1996 (the "Act"); and

WHEREAS, pursuant to the Interconnection Agreement, McLeodUSA has purchased physical and/or virtual collocation and ancillary services from Qwest. McLeodUSA now desires to return to Qwest the collocation sites identified in Exhibit A (the "Facilities") attached hereto and incorporated by reference; and

WHEREAS, the Parties voluntarily enter into this Agreement as a final resolution to disputes arising between the Parties regarding the terms and conditions of McLeodUSA's return of the Facilities and the financial obligations of each Party with respect to each of the Facilities under the Interconnection Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Facility Decommissioning.** In consideration for the Release and Waiver set forth below, Qwest hereby agrees to decommission the Facilities and to waive all fees and charges associated therewith.
2. **Credit/Reimbursement.** In the event that McLeodUSA was previously invoiced and paid Qwest for the decommissioning quotes and the monthly recurring charges past the date of acceptance of the valid decommissioning application, Qwest shall make a one-time credit to McLeodUSA for the sum of any non-recurring charges paid for the decommissioning and any monthly recurring charges paid for the Facilities after the date of Qwest's acceptance and validation of the decommissioning request. This credit amount will be applied, first, to satisfy any undisputed outstanding balances owed by McLeodUSA to Qwest, if any. If a credit balance remains, McLeodUSA may request the credit be paid them via check. Such check shall be issued by Qwest within thirty (30) days of the Effective Date hereof.
3. **Release and Waiver.**

(a) For valuable consideration to be paid by Qwest to McLeodUSA as provided in Sections 1 and 2 above, McLeodUSA hereby releases and forever discharges Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liability, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the Facilities or this Agreement, excepting any personal injury or property damage liabilities of Qwest relating to the Facilities arising under the Interconnection Agreement (the "Release

See
EXHIBIT A
one time
payment
#31/01/01

and Waiver"). McLeodUSA hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Agreement.

(b) As part of the Release and Waiver described in the previous paragraph, McLeodUSA expressly agrees to relinquish forever all rights and interest whatsoever in the Facilities and to remove all property it owns from the Facilities within thirty (30) days of the Effective Date of this Agreement at McLeodUSA's own expense.

(c) In the event McLeodUSA fails to remove its equipment from the Facilities as provided above, Qwest may, without notice or demand and in addition to any other right or remedy available at law or equity, remove all of McLeodUSA's equipment (using the same reasonable standard of care as Qwest would utilize removing its own equipment) from the Facility and store the same at McLeodUSA's expense. Qwest shall notify McLeodUSA in writing that any such equipment has been removed. McLeodUSA expressly waives any damages occasioned by such removal. Any equipment so removed will be returned to McLeodUSA upon payment in full of all reasonable storage costs. If within forty-five (45) days following such equipment removal, McLeodUSA has not requested the return of its equipment and paid any sums owed, then Qwest may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. Qwest's exercise of any remedies provided for in this Section 3 shall be without prejudice to any other remedies Qwest may have provided for herein or by law.

(d) The foregoing notwithstanding, the releases and waivers contained in this Section 3 shall not apply to any required retroactive collocation fee adjustments, impositions and/or refunds mandated by the Federal Communications Commission or other governing body of competent jurisdiction. The Parties shall recognize and abide by any such required adjustments, impositions and/or refund obligations.

4. Confidentiality.

(a) The Parties expressly agree that they will keep the substance of the negotiations and or conditions of the settlement and the terms or substance of this Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law and except as necessary to disclose to such Party's attorneys and/or accountants who are under an obligation to protect the same. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties agree that this Agreement and negotiations, and all matters related to these two matters, shall be subject to the Rule 408 of the Federal Rules of Evidence at the federal level and its equivalent at the state level. The Parties further agree that in the event of a breach of the confidentiality provisions of this Agreement, the harm suffered by the injured Party would not be compensable by monetary damages alone and, accordingly, that the injured Party shall, in addition to other available legal or equitable remedies, be entitled to seek an injunction against such breach.

(b) In the event either Party has a legal obligation which requires disclosure of the terms and conditions of this Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement. At least ten days advance notice under this paragraph shall be provided to the other Party, whenever possible.

5. Binding Arbitration. The Parties hereby agree that any claim, controversy or dispute between the Parties in connection with this Agreement, shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall

govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement, but shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator.

6. **Full Settlement.** The Parties acknowledge and agree that legitimate disputes regarding collocation facility decommissioning and the monetary obligations of each of the Parties have been raised and that the resolution reached in this Agreement represents a binding compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement shall be deemed full and complete and, except as provided in Section 5 above, cannot be used to the detriment of either Party.

7. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement except as expressly provided herein.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cannot be rescinded, amended or modified except in a writing executed by authorized representatives of both Parties. The Parties have entered into this Agreement after conferring with legal counsel. Each of the Parties forever waives all right to assert that this Agreement was a result of a mistake in law or in fact.

9. **Binding Agreement.** The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective successors, affiliates and assigns.

10. **Severability.** If any provision of this Agreement should be declared to be unenforceable by any administrative agency, court of law, or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provision were not part of this Agreement.

11. **Waiver.** The waiver of any right on one or more occasions by either Party shall not constitute a waiver of any such right in any other instance.

12. **Counterparts.** This Agreement may be executed by facsimile signature (provided it is immediately followed by the original by mail) and in any number of counterparts, each of which would be deemed to be original and all of which taken together shall constitute one and the same agreement.

13. **Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

IN WITNESS THEREOF, the Parties have caused this Facility Decommissioning Agreement to be executed as of this 20th day of Dec 2001.

MCLEODUSA INC.

By: 

Name of Signatory

Title: J.P. FLANNERY

QWEST CORPORATION

By: 

Audrey McKenney

Title: Senior Vice President

By: 

Steve Hansen

Title: Vice President

EXHIBIT A

BAN	Submit Date	Validation Date	Decommissioning Completion Date (Actual Date MRCs Ceased)	State	CLLI	CO Name	Decommission NRCs Paid	Decommission NRCs Not Paid	MRC Ban #	Monthly Recurring Charges
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REDACTED