

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the Operations and Practices of Qwest Communications Corporation, et al. Concerning Compliance with Statutes, Commission Decisions and Other Requirements Applicable to the Utility's Installation of Facilities in California for Providing Telecommunications Service.

I.00-03-001
(Filed March 2, 2000)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is the final and complete expression of the Agreement entered into this 24th day of May 2006 by and between Qwest Communications Corporation ("Qwest") and the Consumer Protection and Safety Division ("CPSD") of the California Public Utilities Commission ("CPUC" or "Commission"), which collectively are the "Settling Parties" to this Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement").

WHEREAS, the Commission has before it Investigation ("I.") 00-03-001, entitled "Investigation into the Operations and Practices of Qwest Communications Corporation, et al. Concerning Compliance with Statutes, Commission Decisions and Other Requirements Applicable to the Utility's Installation of Facilities in California for Providing Telecommunications Service," ("the OII") to determine whether Qwest has violated Decision 97-09-110, D.97-04-011, and/or failed to comply with the terms of the Negative Declarations issued with those decisions;

WHEREAS, Qwest has denied any wrongdoing and liability arising out of and relating to I.00-03-001;

WHEREAS, the Qwest Fiber Optic Project Cultural Resources Protocols, dated February 16, 2000, (the "Protocols") set out procedures for Qwest's project planning, construction and maintenance activities to ensure the protection of significant

cultural resources; and

WHEREAS, in order to avoid the risks and costs of further litigation, the Settling Parties have agreed to the following terms and conditions as a complete and final resolution of all disputed issues that were or could have been raised in this proceeding;

JOINT STATEMENT OF THE CASE

In I.00-03-001, CPSD alleged that Qwest, and/or its affiliates, U.S. Long Distance Communications, Inc. ("USLD") and LCI International Telecom dba Qwest Communications Services ("LCI"), constructed and installed telecommunications facilities in California in violation of Commission requirements imposed in Mitigation Measure J of Negative Declaration IV, attached to D.97-04-011, and Mitigation Measure J of Negative Declaration VI of D.97-09-110, a copy of which is attached hereto as Exhibit A. Qwest denies that it was constructing pursuant to the authority granted by the CPCNs issued in D.97-04-011 and D.97-09-110, and denies that it was required to comply with the terms of the Mitigated Negative Declarations in those decisions.

Prior to the issuance of the OII, on December 16, 1999, the Commission's Energy Division issued a "Stop Work" notice, directing Qwest to halt its construction activities until further notice. Qwest immediately halted work and began drafting cultural resource protocols which were reviewed by the Commission and the Native American Heritage Commission. The Stop Work notice was lifted on February 17, 2000, the day after Qwest's Fiber Optic Project Cultural Resources Protocols were finalized.

The OII was filed on March 2, 2000, accompanied by the staff declarations of John Boccio, Richard Chan and Larry McNeely. The Salinan Nation Cultural Preservation Association ("Salinan Nation") filed as an intervenor party on March 9, 2000. The OII alleged that in December 1999, Qwest was engaged in the construction

of telecommunications facilities in Santa Clara, San Luis Obispo and Los Angeles counties without having conducted the appropriate data research in order to ensure that cultural resources were not destroyed or adversely impacted. The OII stated that, pursuant to Public Utilities Code Sections 2107, the Commission may impose penalties in the amount of \$500 to \$20,000 per day per offense and that pursuant to Public Utilities Code Section 2104, such penalties would be paid to the General Fund of the California State Treasury.

Qwest moved to have the OII dismissed for want of prosecution, laches, and failure to comply with certain statutes of limitations and raised the affirmative defense that the Commission lacked jurisdiction over this project because the construction of Qwest's nationwide fiber optic backbone network in California was pursuant to federal authority (47 U.S.C. § 214).

Since the OII was issued in 2000, the Settling Parties have engaged in discovery, including multiple data requests, and have performed six depositions, numerous motions, briefs on key issues, and have participated in seven Prehearing Conferences. Each party has retained expert witness archeological consultants who have both performed field studies of the construction project. Special emphasis was placed on the three areas that were the focus of the investigation. Both of these consultants have issued expert witness reports detailing the results of their research on Qwest's construction activities.

In view of the additional time and resources that it would take to resolve the remaining disputed matters through hearings, the Settling Parties have agreed to compromise and settle this matter consistent with the Terms set forth in this Agreement.

TERMS OF SETTLEMENT AGREEMENT

1. This Settlement Agreement shall become effective ("Effective Date") on the date the Commission issues a final decision that approves, without material modification, the Agreement; however, the provisions in paragraphs 4, 5, 6 and 7 shall be stayed until the

time for Commission rehearing and judicial review has passed, all appellate rights are exhausted and, if rehearing or judicial review is sought, the Agreement is upheld without material modification.

2. The Settling Parties agree that this Settlement Agreement represents a compromise, not an agreement or endorsement of disputed facts and law, and the Settlement Agreement does not constitute a precedent regarding any principle or issue in any future proceeding. This Settlement Agreement does not represent or constitute any admission with respect to any issue of fact or law or of responsibility, harm or liability by Qwest.

3. Qwest shall continue to comply with the Protocols. Qwest shall complete the Cultural Resources Final Report of Monitoring and Findings for the Qwest Network Construction Project, State of California, related to the 1999 construction within six (6) months of the Effective Date.

4. Qwest shall conduct a refresher class for its California construction employees regarding compliance with the Protocols, within six (6) months of the Effective Date. Within six (6) months of the Effective Date, Qwest shall provide training regarding compliance with the Protocols to any construction contractors being used by Qwest in California.

5. Qwest shall pay the sum of \$150,000 to the State's General Fund as part of a comprehensive settlement of all issues in this proceeding, within thirty (30) days of the Effective Date. However, if an application for rehearing or a petition for judicial review is filed, Qwest shall place the monies into an escrow account within sixty (60) days of a final Commission decision approving this Agreement without material modification. In the event the Commission materially modifies this Agreement on application for rehearing or a Court or the Commission materially modifies the settlement on judicial

review, the monies placed into the escrow account shall forthwith be returned to Qwest, upon Qwest's request.

6. Qwest shall contribute the sum of \$30,000 to be distributed, at Qwest's election, among one or more of the following groups: (1) The Society for California Archeology - Native American Program; (2) California Indian Storytellers Association; and (3) Advocates for Indigenous California Language Survival. Distribution shall take place within thirty (30) days of the Effective Date. However, if an application for rehearing or a petition for judicial review is filed, Qwest shall place the monies into an escrow account within sixty (60) days of a final Commission decision approving this Agreement without material modification. In the event the order approving this Agreement or the Agreement itself is materially modified on application for rehearing or on judicial review, the monies placed into the escrow account shall forthwith be returned to Qwest, upon Qwest's request.

7. Beginning on the first day of the first full quarter (of the calendar year) following the Effective Date, Qwest will file quarterly reports with the Telecommunications Division of the CPUC summarizing future construction projects, as described in Mitigation Measures B and J of the Negative Declaration VI, Appendix D to D.97-09-110, attached to this Settlement Agreement as Exhibit A. Qwest takes the position that the Protocols supersede and subsume any alleged prior requirement that Qwest file such reports, but for the purpose of this Settlement agrees to file such reports prospectively. Qwest shall notify CPSD of the filing of each such quarterly report by sending a copy of each such report to the Director of CPSD.

8. The Settlement resolves and releases Qwest and its affiliates, successors and assigns from all claims and matters in dispute which were or could have been raised in

the Commission proceeding I.00-03-001. Nothing in this Agreement, however, shall preclude the Settling Parties from enforcing the terms of this Agreement.

9. Either Settling Party reserves the right to withdraw from the Settlement Agreement by written notice to the other party and the Commission under the following circumstances: a) if the Commission rejects all or any portion of the Settlement Agreement; b) if the Commission conditions approval of the Settlement Agreement on material revisions to its terms and conditions; c) if the Commission makes findings of fact and conclusions of law inconsistent with or materially adverse to the statements in this Settlement Agreement; or (d) if a court of competent jurisdiction annuls, reverses, modifies, or alters the Commission's order approving this Settlement Agreement and Release. If either Settling Party exercises its right to withdraw, the Settling Parties will jointly request a pre-hearing conference be convened for purposes of establishing a procedural schedule in I.00-03-001.

10. This Settlement Agreement constitutes the Settling Parties' entire, integrated agreement on all matters set forth herein and is not severable. The Agreement supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Settling Parties.

11. The Settling Parties ask the Commission to adopt this Agreement in its entirety and without modification. The parties shall defend the Settlement and shall jointly and severally oppose any objections to the Settlement raised by any third party.

EXECUTION OF THE AGREEMENT

12. The Settling Parties agree, without further consideration, to execute and/or cause to be executed, any other documents and to take any other action as may be necessary, to effectively consummate this Settlement Agreement.

13. This Settlement Agreement shall be binding upon the respective Parties and their successors.

14. The Settling Parties acknowledge that each has read this Settlement Agreement, that each fully understands its rights, privileges, and duties under this Agreement, and that each enters this Agreement freely and voluntarily.

15. This Settlement Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

16. The undersigned acknowledge that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

GOVERNING LAW

17. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the regulations, orders, rulings, and/or decisions of the California Public Utilities Commission.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year written below.

Dated: May 30, 2006

CONSUMER PROTECTION AND
SAFETY DIVISION, THE
CALIFORNIA PUBLIC UTILITIES
COMMISSION

By: 

Dated: May 24, 2006

APPROVED AS TO FORM ONLY,
COUNSEL FOR CONSUMER
PROTECTION AND SAFETY
DIVISION, THE CALIFORNIA
PUBLIC UTILITIES COMMISSION

By: Charlynn A. Hook

Dated: _____, 2006

QWEST COMMUNICATIONS
CORPORATION

By: _____

Dated: _____, 2006

APPROVED AS TO FORM ONLY
STEEFEL, LEVITT & WEISS
COUNSEL FOR QWEST
COMMUNICATIONS
CORPORATION

By: _____

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year written below.

Dated: _____, 2006

CONSUMER PROTECTION AND
SAFETY DIVISION, THE
CALIFORNIA PUBLIC UTILITIES
COMMISSION

By: _____

Dated: _____, 2006

APPROVED AS TO FORM ONLY,
COUNSEL FOR CONSUMER
PROTECTION AND SAFETY
DIVISION, THE CALIFORNIA
PUBLIC UTILITIES COMMISSION

By: _____

Dated: 26 May, 2006

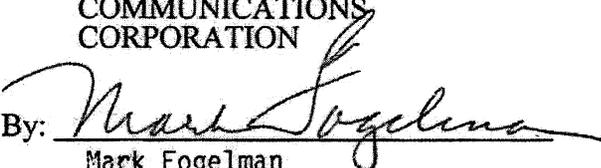
QWEST COMMUNICATIONS
CORPORATION

By:  _____

Pieter D. Poll

Dated: May 30, 2006

APPROVED AS TO FORM ONLY
STEEFEL, LEVITT & WEISS
COUNSEL FOR QWEST
COMMUNICATIONS
CORPORATION

By:  _____

Mark Fogelman

ATTACHMENT A to SETTLEMENT AGREEMENT AND RELEASE

(From Mitigation Measures in D.97-09-110, Neg. Dec. VI,
same language in D.98-03-066, Neg. Dec. VII)

B) General Cumulative Impacts: ... [text omitted] ... "For projects within the utility right of way, the petitioner must: "Each petitioner shall file a quarterly report, one month prior to the beginning of each quarter, that summarizes the construction projects that are anticipated for the coming quarter. The summary will contain a description of the type of construction and the location for each project so that the local planning agencies can adequately coordinate multiple projects if necessary. The reports will also contain a summary of the petitioner's compliance with all Mitigation Measures for the projects listed. The quarterly reports will be filed with the local planning agencies where the projects are expected to take place and the Commission's Telecommunications Division. The Commission filing will be in the form of an informational advice letter. Subsequent quarterly reports shall also summarize the status of the projects listed in previous quarterly reports, until they are completed.

J) Cultural Resources: The petitioners shall conduct appropriate data research for known cultural resources in the proposed project area, and avoid such resources in designing and constructing the project. Should cultural resources be encountered during construction, all earthmoving activity which would adversely impact such resources shall be halted or altered until the petitioner retains the service of a qualified archaeologist who will do the appropriate examination and analysis. The archaeologist will provide proposals for any procedures to mitigate the impact upon those resources encountered. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

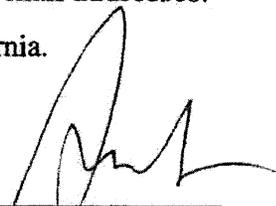
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“JOINT MOTION OF QWEST COMMUNICATIONS CORPORATION AND THE CONSUMER PROTECTION AND SAFETY DIVISION FOR APPROVAL OF SETTLEMENT AGREEMENT”** in **I.00-03-001** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **May 30, 2006** at San Francisco, California.



Angelita Marinda

NOTICE

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

(END OF ATTACHMENT A)