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EXHIBITS

PART II

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing telecommunications facilities. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.

10.8.1.4 ~~CLEC~~ Duties –~~CLEC~~ Each party shall have the duty to afford access to ~~the~~ its poles, ducts, conduits and rights-of-way of ~~CLEC~~ telecommunications services to ~~Qwest~~ the other party on rates, terms, and conditions that are consistent with 47 U.S.C. §§~~Section~~ 224 & 251(b)(4) and applicable FCC orders and regulations or state rules~~, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right-of-way when feasible and when access is necessary for Qwest to provide service as may be set forth in 47 U.S.C. §251(b)(4), applicable FCC orders and regulations or state rules~~.

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real or personal property.

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Innerduct Occupancy General Information Document, attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to Qwest. Upon request, Qwest shall permit CLEC to install Poles/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances.

To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest

shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Access Agreement by which Qwest conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Access Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

10.8.3 Rate Elements

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to Telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for ROW, Poles and Conduit/Innerduct.

10.8.3.2 Field Verification Fee/Access Agreement Preparation Fee. In the case of Poles and Innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-

Ready work. Separate Field Verification Fees apply for Poles and Manholes. In the case of ROW, the Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Access Agreement for each ROW requested by the CLEC. Field Verification and Access Agreement Preparation Fees shall be billed in advance.

10.8.3.3 Make-Ready Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for access. For innerduct, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW, or other circumstances giving rise to such work beyond the simple preparation of one or more Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 Access Agreement Consideration. A pre-paid fee which constitutes consideration for conveying access to the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee.

10.8.4 Ordering

There are two (2) steps required before placing an Order for access to ROW, Innerduct and Pole Attachment: Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Innerduct Occupancy, Qwest will provide CLEC with Exhibit D. CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.

10.8.4.1.1 Inquiry Review – Duct/Conduit. Qwest will complete the database inquiry and prepare a duct structure diagram

(referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.2 Field Verification – Poles Ducts and Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus $10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Innerduct or ROW: (a) in the

case of Poles or Duct, a field survey and site investigation of the Poles or Duct, including the preparation of distances and drawings, to determine availability of existing Poles/Innerduct; identification of Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey the interest identified in the Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve Qwest; and/or (c) In the case of Poles or Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Ducts. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after written notification of the completion of the Make-Ready work.

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

10.8.5 Billing

CLEC agrees to pay the following fees in advance as specified in Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices. All fees are not refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

QWEST'S NOTICE OF FILING REVISED SGAT LANGUAGE REGARDING CHECKLIST ITEM 3

Qwest Corporation, formerly U S WEST Communications, Inc., ("Qwest") submits this Notice Of Filing Revised SGAT Language Regarding Checklist Item 3, attached to which are revised versions of section 10.8 of the SGAT and Exhibit D to the SGAT. A request was made at that workshop that Qwest submit new, updated versions of section 10.8 and Exhibit D, reflecting all stipulations of the parties and Qwest's position on all remaining impasse issues. Qwest hereby complies with that request.

On September 12, 2000, Qwest filed a Late-Filed Status Report On Issue 3-4 And Revised Statement Of Qwest Position Regarding Issue 3-14, attaching revised versions of section 10.8 and Exhibit D. Those revised versions contained language agreed to by Qwest in the course of negotiations up until the filing date and language representing Qwest's positions at the time on the remaining four impasse issues.

At the last Colorado workshop, Qwest reached agreement with AT&T on two of the impasse issues: public recording of MDU agreements and deferral of checklist item 3. Although the deferral stipulation did not require changes to the SGAT, Qwest's concession regarding recordation of MDU agreements required changes in Exhibit D, which are redlined in the attached version of Exhibit D.

In addition, Qwest agreed to a revision of section 10.8.1.4 in the first Oregon workshop that was not shown in the September 12 version of section 10.8, but which is shown in the attached version of section 10.8.

Respectfully submitted,

QWEST CORPORATION

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ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the above and foregoing **QWEST'S NOTICE OF FILING REVISED SGAT LANGUAGE REGARDING CHECKLIST ITEM 3** was hand delivered this 29th day of September, 2000, to the following:

Mr. Bruce N. Smith
Colorado Public Utilities Commission
Executive Secretary
1580 Logan St., Office Level 2
Denver, CO 80203

and a copy has been hand delivered on the following:

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Denver, CO 80203

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Denver, CO 80203

and a copy was served electronically to each person on the e-mail distribution list for this docket.

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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996	))))	Docket No. UT-003022

DIRECT TESTIMONY OF

KENNETH WILSON

ON BEHALF OF

AT&T COMMUNICATIONS

OF THE PACIFIC NORTHWEST, INC.

AND AT&T LOCAL SERVICES

ADDRESSING

ACCESS TO POLES, DUCTS, CONDUIT AND RIGHTS OF WAY,

911, SIGNALING AND DATABASES, DIRECTORY LISTINGS,

NUMBER ADMINISTRATION

AND RECIPROCAL COMPENSATION

EXHIBIT KLW-1T

MAY 22, 2000

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I. STATEMENT OF QUALIFICATIONS, SCOPE AND SUMMARY

Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Kenneth L. Wilson. I am a Senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am filing this testimony on behalf of AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T").

Q. PLEASE REVIEW YOUR EDUCATION AND RELEVANT WORK EXPERIENCE.

A. I received a BS in Electrical Engineering from Oklahoma State University in 1972. I received an MS in Electrical Engineering from the University of Illinois in 1974. I completed all the course work for a Ph.D. in Electrical Engineering from the University of Illinois in 1976.

I am currently a Senior Consultant and Expert Witness with Boulder Telecommunications Consultants, LLC. From 1995 through spring 1998, I was the Business Management Director for AT&T in Denver, managing one of the groups responsible for getting AT&T into the local market in the U S WEST Communications, Inc. ("U S WEST") states. My primary responsibility was lead negotiator for AT&T with U S WEST in the 14 U S WEST states. I was also the senior technical manager in Denver, leading teams working on local network and interconnection planning, OSS interface architectures, and the technical aspects of product delivery.

For the 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions. From January 1994 through May 1995 I led a team at Bell Labs investigating the various network infrastructure alternatives for entering the local telecommunications market. From 1992 through 1993, I was one of the key team leaders on a project to reduce AT&T's capital budget for network infrastructure. From 1986 through 1992, I led a Bell Labs group which was responsible for network performance planning and assurance for AT&T Business Markets. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1980 through 1982, I was a member of a network architecture and network planning team at Bell Labs for AT&T's long distance services.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to review the terms and conditions under which U S WEST offers new entrants in Washington the following checklist items established under Section 271 of the Telecommunications Act of 1996 (the "Act"):

- Checklist Item 3 -- Nondiscriminatory access to poles, ducts, conduits and rights of way;
- Checklist Item 7 -- Nondiscriminatory access to 911 and E911;
- Checklist Item 8 -- Directory listings;
- Checklist Item 9 -- Number administration;
- Checklist Item 10 -- Nondiscriminatory access to unbundled signaling and databases necessary for call routing and completion;
- Checklist Item 12 – Dialing parity;
- Checklist Item 13 -- Reciprocal compensation.

Q. WHAT IS THE STANDARD AGAINST WHICH U S WEST'S PERFORMANCE MUST BE MEASURED UNDER SECTION 271?

A. The competitive checklist and other requirements of Section 271 prescribe the mechanism by which a Regional Bell Operating Company ("RBOC"), such as U S WEST, may provide in-region interLATA services. Congress properly determined that an RBOC's entry into the long distance market would be anti-competitive unless the RBOC's local market power is "first demonstrably eroded by eliminating barriers to local competition."[1] To demonstrate compliance with Section 271, therefore, U S WEST must show that it has made real, significant, and irreversible steps to open its local market in Washington, both in statements of policy and in actual implementation of policy.[2] All of the "various methods of entry into the local telecommunications market contemplated by the Act -- construction of new facilities, purchase of unbundled network elements, and resale -- [must] be truly available,"[3] in the manner proscribed by the Act, the Federal Communications Commission ("FCC") regulations and orders and state commissions before U S WEST can be found to have actually opened its local markets.

The FCC has concluded that to make a *prima facie* case that it is meeting the requirements of a particular checklist item, an RBOC must:

> demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. The Commission has previously concluded that, to establish that it is "providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-

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[1] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 18 *("Ameritech Michigan Order").*

[2] *Id.*

[3] *Id.*, ¶ 21.

> approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[4]

Accordingly, U S WEST must demonstrate that it has a concrete and specific legal obligation to provide each checklist item in a manner that is consistent with the requirements of Sections 271, 251 and 252 of the Act. To meet this burden, this Commission has determined that U S WEST must demonstrate that its legal obligations have been met through Washington-approved interconnection agreements ("ICAs"), except that U S WEST may rely on its SGAT for elements and services not otherwise dealt with in the ICAs.

Second, it must be determined whether U S WEST is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.

Q. SHOULD U S WEST'S PERFORMANCE UNDER THE FIRST SEVEN CHECKLIST ITEMS (THE SECOND PRONG OF THE ANALYSIS) BE ASSESSED AT THIS TIME?

A. No. While Checklist Items 7, 9, and 10 have performance metrics and U S WEST has provided limited performance data, in some cases, and proposed metrics, in other cases, for all of the checklist items at issue here, performance-related issues should not be considered at this time. That is consistent with the Commission's recognition in its

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[4] *Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana*, CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 54 (*"BellSouth Second Louisiana Order"); Ameritech Michigan Order,* ¶ 110.

Order, dated March 15, 2000, that OSS test results would not be considered until they are complete.[5] The results of the OSS test encompass all performance measures related to all checklist items, and any evaluation of performance should await completion of the OSS test that governs that performance.

Q. WHY SHOULDN'T THE COMMISSION CONSIDER PERFORMANCE NOW?

A. As the Commission is well aware, performance measurement data is inextricably linked to a discussion of Operational Support System ("OSS") issues. Both performance metrics and the testing of U S WEST's performance is under consideration in the Regional Oversight Committee ("ROC") process established to test U S WEST's OSS. ROC is in the process of developing appropriate performance metrics to measure U S WEST's performance under the standards established by the FCC under Section 271. Once these metrics are complete, U S WEST's performance will be measured in the Third Party Testing process to assess U S WEST's compliance with Section 271. As part of this process, an independent third party will audit U S WEST's performance data. This is a critical part of the ROC collaborative process because inconsistent use, collection and examination of data will render the measurements inaccurate.

Allowing the ROC collaborative process to complete the development, review and audit of U S WEST's performance measures and data submitted thereunder is critical because AT&T's careful examination of U S WEST's performance measurement data in other Section 271 proceedings to date has shown that it is often unclear what data U S WEST is actually reporting. One problem is that U S WEST does not provide the raw data from

[5] *Order Adopting Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements,* Docket No. UT- 970300, p. 8.

which its results are generated. AT&T has discovered through data requests and cross-examination in these proceedings that U S WEST is prone to inconsistent treatment of CLEC and U S WEST internal data, e.g., U S WEST may not include some data when measuring CLEC results but may include it when measuring U S WEST's internal performance, or vice versa. This inconsistent treatment results in potentially erroneous conclusions that U S WEST's performance for CLECs is better than it really is, and that U S WEST's performance to itself and its retail customers is worse than it really is.

ROC recognized the potential for data disputes and appropriately decided that an evaluation of U S WEST's data collection, analysis and reporting processes, and a review of U S WEST's actual data, is necessary before U S WEST-provided data can be relied upon. Therefore, Washington should wait until the entire ROC OSS test is concluded satisfactorily before it considers any performance data. Similarly, Washington should not approve any particular performance metrics proposed by U S WEST until the ROC performance metric development process is complete. Thus, for purposes of determining U S WEST's compliance with these performance-related checklist items, the Commission should reserve final resolution of these checklist items until the ROC collaborative process is complete and proper performance measurement data has been produced and assessed. This is consistent with the approach taken by the Arizona and Colorado Commissions.

Q. PLEASE SUMMARIZE YOUR TESTIMONY REGARDING THESE CHECKLIST ITEMS.

A. While U S WEST has provided a matrix of provisions from Washington-approved ICAs that purport to satisfy its obligations under Section 271, U S WEST has presented no

specific evidence as to how these ICA provisions demonstrate U S WEST's compliance with the seven checklist items at issue. Indeed, in its testimony, U S WEST relies exclusively on its SGAT when describing how it complies with these checklist items. In addition, U S WEST readily concedes that many of its checklist obligations are not satisfied by provisions in its Washington-approved ICAs, particularly obligations that stem from more recent FCC orders.[6] Accordingly, from purely an ICA standpoint, U S WEST has not met its burden of proof.

Instead, U S WEST's testimony focuses entirely on its SGAT to demonstrate compliance with these checklist obligations. This is the approach that U S WEST has taken in other states, as well. Therefore, the focus of this testimony will be to analyze whether the SGAT submitted by U S WEST sets forth the concrete and specific legal obligations to furnish these seven checklist items. In fact, AT&T and U S WEST have engaged in extensive negotiations in the Arizona workshops to address the concerns AT&T has raised regarding the SGAT's compliance with Section 271 for the checklist items at issue. The parties have made considerable progress in those negotiations and many of AT&T's concerns have been addressed by revisions that have been incorporated into the SGAT that U S WEST has filed in Washington. However, there remain outstanding issues on

[6] *See* U S WEST's Comments Regarding Its Statement of Generally Available Terms and Conditions, *In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040, pp. 2-3, 4, dated May 17, 2000 ("*U S WEST SGAT Comments*") ("The SGAT, unlike current Commission approved interconnection agreements, (which in many instance are years old), contains provisions for new services per recent FCC's (sic) orders, such as line sharing, high capacity loops, and UNE combinations.") ("The SGAT is the most up-to-date statement of U S WEST's legal obligations under section 271...").

all checklist items, except for Checklist Items 8 and 12. In addition, certain issues raised by AT&T have been deferred to other checklist items. Specifically, access to rights of way in connection with access to subloops/MDUs was deferred to Checklist Items 2 and 4, LRN issues were deferred to Checklist Item 1, number porting issues and their impact on access to 911 were deferred to Checklist Item 11, and issues surrounding the reassignment of ported numbers to U S WEST customers was deferred to Checklist Item 11.

To aid the Commission, Commission Staff and other parties, this testimony has been structured to summarize AT&T's previous concerns and describe how those concerns were resolved in the course of the Arizona workshops. To the extent issues remain disputed, AT&T has provided a more detailed explanation of its concerns regarding U S WEST's compliance for those issues. Finally in a few limited instances, AT&T has identified new concerns and has detailed those concerns below.

Q. FOR THOSE ITEMS WHERE AT&T IS SATISFIED THAT THE SGAT REFLECTS AN APPROPRIATE LEGAL OBLIGATION, IS THAT SUFFICIENT TO SHOW THAT U S WEST HAS SATISFIED SECTION 271 FOR THAT CHECKLIST ITEM?

A. No. First, U S WEST must demonstrate the second prong of the Section 271 analysis by demonstrating that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.

In addition, because the SGAT has not yet been approved by the Commission, it cannot be relied upon to satisfy U S WEST's legal obligation.

Further, although U S WEST claims that CLECs can "opt into" the provisions in its SGAT, it only allows them to do so if the provision does not otherwise "lose its context" or so long as the CLEC "maintains the context."[7] As a result, U S WEST has substantial and unfettered discretion to deny CLECs' request to pick portions of the SGAT and make them part of their interconnection agreement. Incorporation of portions of the SGAT into CLEC interconnection agreements must be liberally permitted in order for U S WEST to be truly "offering" any particular service or network element.

II. U S WEST'S COMPLIANCE FILING

A. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way.

Q. WHAT MUST U S WEST PROVE TO DEMONSTRATE COMPLIANCE WITH CHECKLIST ITEM 3?

A. Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[8]

In the *Local Competition Order*, the FCC interpreted section 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in

[7] *U S WEST SGAT Comments*, p. 4.
[8] *BellSouth Second Louisiana Order*, ¶ 171.

accordance with the requirements of section 224.[9] The FCC has reinforced the requirements set out in its *Local Competition Order* in its recent *Order on Reconsideration*.[10] In addition, the FCC more recently interpreted the revised requirements of Section 224 governing rates, terms and conditions for telecommunications carriers' attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.[11]

Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[12] Notwithstanding this requirement, Section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[13]

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[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 99-325 (rel. Aug. 8, 1996) (*"Local Competition Order"*).

[10] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 99-266 (rel. Oct. 26, 1999) (*"Order on Reconsideration"*).

[11] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) (*"Pole Attachment Telecommunications Rate Order"*).

[12] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[13] 47 U.S.C. § 224(f)(2).

Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[14] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[15] Notwithstanding this general grant of authority, Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." In addition, Section 224 expressly excludes incumbent LECs, such as U S WEST from the class of persons entitled to such access.[16]

In its *Bell South Second Louisiana* decision, the FCC concluded that BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions by demonstrating that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to Section 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

[14] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).
[15] 47 U.S.C. § 224(b)(1).
[16] See 47 U.S.C. § 224(a)(5) and 224(f)(1) and *Local Competition Order*, ¶ 1231.

The FCC specifically concluded that:

> consistent with the Commission's regulations implementing section 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames. Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[17] Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.[18] If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above.[19]

A lack of capacity on a particular facility does not entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC to take all reasonable steps to accommodate access in these situations. If a telecommunications carrier's request for access cannot be accommodated due to a lack of available space, a BOC must modify the facility to increase capacity under the principle of nondiscrimination.[20]

Q. DOES U S WEST HAVE THE LEGAL OBLIGATION IN ITS ICAS OR SGAT TO PROVIDE NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS OF WAY?

A. No. While AT&T's ICA language is fairly encompassing, it does not reflect all of the new obligations that have been established by the FCC in more recent orders.[21] On the

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[17] *Local Competition Order*, ¶ 1123.
[18] 47 C.F.R. § 1.1403(b).
[19] *BellSouth Second Louisiana Order*, ¶ 176.
[20] *Local Competition Order*, ¶ 1224.
[21] *See, e.g, Order on Reconsideration.*

other hand, the TCG ICA has minimal language relating to access to poles, ducts conduits, and rights of way.

With respect to the SGAT, AT&T and MCI raised a number of issues in the Arizona 271 workshop regarding the SGAT's provisions addressing access to poles, ducts, conduits, and rights of way. The majority of AT&T's concerns were addressed through revisions made by U S WEST to its SGAT and via representations made by U S WEST in the course of the workshop. The discussion below explains these issues and, in some instances, any steps that need to be taken in Washington to address these issues.

Q. PLEASE SUMMARIZE THE ISSUES THAT WERE RAISED BY AT&T IN ARIZONA ON THIS CHECKLIST ITEM AND HOW THEY WERE RESOLVED.

A. In the Arizona workshops, AT&T raised concerns that the SGAT did not provide assurances to CLECs that U S WEST will provide access to poles, ducts, conduit and rights-of-way "owned or controlled by" U S WEST, as is required by the Act. Without such assurances, U S WEST would not be legally bound to provide access to the full panoply of poles, ducts, conduits and rights-of-way required by the Act. U S WEST has corrected this concern with revisions to Section 10.8.2.1.

Second, the SGAT failed to acknowledge that U S WEST may only deny a request for access for reasons of safety, reliability and generally applicable engineering purposes, provided these principles are applied in a nondiscriminatory manner.[22] If a CLEC request for access cannot be accommodated due to a lack of available capacity, U S WEST must modify the facility to increase its capacity under the principle of nondiscrimination and

[22] 47 U.S.C §224(f)(2); *Local Competition Order*, ¶ 1222.

must explore accommodation in good faith with the party seeking access.[23] U S WEST revised Section 10.8.2.6 to address this concern.

Third, U S WEST may not reserve space for the provision of telecommunications or video service to the detriment of a new entrant, although the utility may reserve space for its core utility service.[24] The SGAT was completely silent on when and how U S WEST will reserve space for itself. U S WEST revised Section 10.8.2.6 to address this issue.

Fourth, U S WEST did not make any affirmative statement as to what poles, ducts, conduits and rights-of-way will be made available or where those will be made available. AT&T asserted that it must be clear that U S WEST is obligated to provide access to all poles, ducts, conduits and rights-of-way, whether on public property, private property or owned property, that is owned or controlled by U S WEST. Similarly, U S WEST makes no affirmative statement about access to Multiple Dwelling Unit ("MDU") and other multiple tenant environments. The FCC has tentatively concluded that the obligations under Section 224 encompass in-building conduit, such as riser conduit, that may be owned or controlled by U S WEST.[25] Availability of space on rooftops of U S WEST buildings and public and private buildings where U S WEST has access was also not mentioned. U S WEST added and revised Section 10.8.1.3 to generically address this issue.

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[23] 47 U.S.C §224(f)(2); *Order on Reconsideration*, ¶ 8.
[24] *Local Competition Order*, ¶ 1120.
[25] *Promotion of Competitive Networks in Local Telecommunications Market*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, FCC 99-141, ¶ 44 (rel. July 7, 1999).

Fifth, the SGAT specifically prohibited CLECs from making splices in the central office manhole, while acknowledging U S WEST's right to do so. U S WEST has amended Section 10.8.2.9 to accommodate this concern.

Sixth, Section 10.8.2.19 of the previous SGAT required CLECs to give up the use of poles, ducts, conduits and rights-of-way when U S WEST decides to abandon those or to buy the poles/innerduct from U S WEST. If U S WEST sells poles or innerduct to another party, the SGAT seemed to preclude the CLECs' right to any ongoing use. This could be very expensive for the CLECs and potentially disruptive to existing service. AT&T asserted that U S WEST should include provisions in any contract for sale of poles, innerduct or rights-of-way that protects existing and continuing CLEC use of the conveyed poles, conduits, ducts or rights-or-way. U S WEST should further protect CLECs' interests in poles, ducts, conduits and rights-of-way when U S WEST sells an exchange outright. Section 10.8.2.19 of the SGAT was amended to accommodate these concerns.

Seventh, AT&T and Cox raised concerns regarding U S WEST's provisioning of access to MDUs, expressing concerns regarding the use of exclusive arrangements with MDU and campus business owners/operators that work to exclude CLECs from accessing rights of way of the MDUs and campus businesses. This prevents CLECs from providing competitive service to residential and business customers located within the complexes. In Arizona, the parties agreed to defer this issue to Checklist Item 2 (UNEs), and Checklist Item 4 (Loops and Subloops). AT&T agrees to defer this issue in Washington to the workshops on Checklist Items 2 and 4. If not, AT&T requests an opportunity to

supplement these comments to address these issues, or to discuss its concerns during the scheduled workshops.

Eighth, AT&T expressed concern that numerous requirements associated with the cost of replacement or modification of existing poles, ducts, conducts or innerduct that had been addressed by the FCC were not fully reflected in the SGAT. U S WEST revised Section 10.8.2.10 to conform the cost requirements to the relevant requirements in the FCC Orders.

Ninth, AT&T raised concerns regarding the issue of ownership of innerduct that is placed by a CLEC in an empty U S WEST duct. U S WEST has modified Section 10.8.1.2 of the SGAT to accommodate this concern.

Tenth, U S WEST did not specifically grant access rights to rooftop space on U S WEST buildings. In the Arizona workshops, U S WEST stated that Section 10.8.1.3 includes such access to the extent the space is owned or controlled by U S WEST. U S WEST must make this same acknowledgement in Washington.

Q. ARE THERE ANY REMAINING ISSUES WITH THE SGAT LANGUAGE U S WEST HAS PROPOSED ON THIS CHECKLIST ITEM?

A. Yes. Section 10.8.2.4 fails to obligate U S WEST to provide relevant plats, maps, engineering reports and other data within any time frame if such requests involve the gathering of plats from multiple locations. At a minimum, U S WEST should be obligated to provide such information within a reasonable time period, not to exceed 60 days.

Section 10.8.2.5 ambiguously limits U S WEST's obligations to construct, install, modify or place Poles/Innerduct as required by the Pole Attachment Act of 1934 or as otherwise "expressly" provided in the SGAT. The SGAT should incorporate all other relevant state and municipal laws in this regard. The SGAT should be revised to clarify that U S WEST must comply will all laws, be they federal, state or municipal, that relate to the construction, installation, modification or placement of poles, ducts, conduits and rights-of-way.

In Section 10.8.2.8, U S WEST obligates all CLECs to obtain the necessary authority to occupy ROW and/or Poles/Innerduct. While perfectly appropriate, U S WEST fails to obligate itself to provide agreements that it may have in respect to such ROW or Poles/Innerduct upon the request of the CLEC, thereby unnecessarily hampering the CLEC from concluding its agreement with the owners of these rights. AT&T has experienced situations in its negotiations with municipalities and private owners that provision of such agreements would have greatly accelerated its negotiations and U S WEST has refused to provide them. U S WEST should be affirmatively obligated in the SGAT to provide upon the request of a CLEC any and all documents relevant to U S WEST rights and obligations concerning a ROW or Poles/Innerduct.

U S WEST, in Section 10.8.2.14, improperly allows itself to recover the costs of any inspection conducted by U S WEST in which a violation, hazard or other breach of the SGAT is detected. There is no materiality standard qualifying this right of recovery, thereby incenting U S WEST to ascertain minor or inconsequential issues to afford itself recovery. U S WEST should only be able to recover its costs of inspection upon verification that a material violation or breach has occurred. Further, in Section 10.8.2.15

and 10.8.2.16, U S WEST sets up the curious dichotomy of requiring CLECs to pay for all inspections during construction and afterwards, but disclosing any liability in respect to such construction and the related inspections. In effect, U S WEST is asking to be paid without assuming any responsibility. Either U S WEST should assume the normal liability associated with inspections or, in the alternative, it should not recover the costs of such inspections.

In Section 10.8.2.18, U S WEST utilizes ambiguity of terms to its benefit. In this section, U S WEST reserves itself the right to terminate an order "for cause" and fails to limit the definition of what constitutes cause. At a minimum, if the drastic remedy of terminating an order is to be vested in U S WEST, the explicit circumstances of when U S WEST may do so needs to be outlined.

Finally, in Section 10.8.2.20, U S WEST conditions a CLEC's access to poles, ducts, conduits and rights of way on the "requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act . . .," all of which are incorporated into the SGAT by reference. This paragraph is problematic in at least two ways. First, this paragraph purports to reconcile potential discrepancies among these standards by requiring that "[w]here a difference in specifications exists, the more stringent shall apply." This provision makes U S WEST's standards regarding access to poles, ducts, conduits and rights of way unreasonably restrictive. A more permissive and procompetitive approach would be to require that the less stringent specification shall apply. Second, this paragraph makes reference to "U S WEST's procedures governing its standard

maintenance practices," but the paragraph does not explain these "procedures," does not incorporate such "procedures" into the SGAT by reference (as it does with the others mentioned previously) and, does not make clear whether these "procedures" supplement or supercede the standards mentioned previously. U S WEST has not presented these procedures as evidence in this proceeding. Therefore, there is no way to evaluate the terms and conditions set forth in these procedures. In short, there is no way for this Commission to ascertain whether these procedures are consistent with the law and implementing FCC regulations and orders and are nondiscriminatory. Nor is there any way to determine if the terms and conditions set forth in the document are consistent with the provisions of the SGAT. For this reason alone, U S WEST cannot satisfy checklist item 3. Given U S WEST's reliance on extrinsic standards, which are at least verifiable and the product of known, industry standard development processes, and U S WEST's explicit (if restrictive) process for dealing with conflict among them, U S WEST's reference to additional "procedures" is too vague. This section should be revised.

Q. WHAT IS YOUR CONCLUSION REGARDING CHECKLIST ITEM 3?

A. Given that the Arizona revised language has been incorporated in the Washington SGAT and assuming the subloop/MDU issue is deferred in Washington as it was in Arizona and Colorado, the only unresolved issues on Checklist Item 3 relate to the additional concerns raised above. As currently drafted, these provisions are not consistent with the Act and must be rejected. The imposition of these inappropriate obligations must be eliminated before U S WEST can be found in compliance with Checklist Item 3.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	)	DOCKET NO. 97I-198T
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	)	DOCKET NO. 99A-577T

RECOMMENDATION OF REDACTION PRINCILES FOR THIRD PARTY CONTRACTS & A RELATED EXAMPLE

Pursuant to issues 3-3 and 3-4 to the follow up set of workshops, AT&T Communications of the Mountain States, Inc., TCG Colorado and WorldCom, Inc. (collectively "Respondents") recommend the following redaction principles regarding third party contracts. In addition to the principles, Respondents offer a copy of redacted Exhibit 1-ATT-59, attached hereto as **Attachments 1**, respectively.

REDACTION PRINCIPLES

The following redaction principles should be applied to U S WEST third party contracts:

1. When a CLEC requests a copy of an agreement that U S WEST has with a property owner, which agreement involves the grant, either explicitly or implicitly, of rights concerning the ownership, control or use of rights-of-way, poles, ducts and

conduits as defined herein, then U S WEST shall provide a copy of such agreement to the requesting CLEC.

2. In producing a copy of the requested agreement, U S WEST may redact only those portions of the agreement that constitute trade secrets as defined under the Colorado Uniform Trade Secrets Act, § 7-74-101 C.R.S. *et seq.*

3. In no case shall U S WEST redact the entire agreement or any provisions that describe, discuss, or otherwise reveal the subjects of right-of-way, easement or other right to use the property for telecommunications or other utility purposes.

4. U S WEST shall not redact any provisions that provide incentives to the property owner to promote or sell U S WEST's services to the third party tenants or residents of the property.[1]

5. U S WEST shall, where confidentiality provisions exist within such agreements, provide and acquire from the property owner all waivers necessary to allow the CLEC to review the agreement.[2]

To be fully effective, these principles require appropriate modifications to the SGAT.

Respectfully submitted on this 14th day of July 2000.

The attorneys for AT&T are authorized to sign on behalf of WorldCom, Inc.

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[1] To the extent such provisions exist, U S WEST should have an affirmative obligation to provide the CLEC and property owner with a written explanation that any incentive provisions do not preclude the CLECs from employing the easements and rights of way nor prohibit CLECs from selling their services in competition with U S WEST.

[2] On a going forward basis, U S WEST should be creating an exemption for CLEC review in all contracts containing confidentiality provisions.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

Thomas C. Pelto
Letty S.D. Friesen

By: _____

1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6475

and

WORLDCOM, INC.

Thomas F. Dixon, #500
707 – 17th Street, Suite 3900
Denver, Colorado 80202
(303) 390-6206
(303) 390-6333 (Fax)

Language attested to by AT&T Commercial Attorney: Richard E. Thayer.

ATTACHMENT 1

2/23
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SAMPLE NOT FOR EXECUTION

AGREEMENT FOR NEW MULTI-TENANT RESIDENTIAL PROPERTIES

This Agreement is made by and between U S WEST Communications, Inc. ("U S WEST"), and Cherrywood Village LLC, ("Property Owner/Developer"), with offices for transaction of business located at 8601 SE Causey St Portland, Or. 97266

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

1. TERM. This Agreement shall commence on Feb. 4, 2000 (the "Effective Date"), and continue for 10 years unless earlier terminated pursuant to this Agreement.

"2. SCOPE OF AGREEMENT. Property Owner /Developer agrees to: 1) endorse and promote U S WEST as the preferred supplier of local telecommunications services including internet access (U S WEST.net), and 2) the provisioning of certain U S WEST products and services for use at the property ("the Property"). In return U S WEST will provide Property Owner/Developer with certain services under terms and conditions specified in this Agreement. U S WEST's variety of services is intended to enhance the value of the Property. The tenants ("Tenants") will reside at the Property specified in Attachment 1, which by this reference is incorporated and made part of this Agreement. Attachment 1 will include the following: 1) the location of the Property(ies) covered by this Agreement, and 2) the total number of individual residential units per Property."

3. U S WEST OBLIGATIONS.

3.1. U S WEST agrees to provide the following:

a. Management and maintenance of the U S WEST facilities specified in Attachment 1.

b. Marketing and promotional support such as Caller ID, Call Waiting, U S WEST.net Services, and Voice Messaging, including; 1) Product and service collateral materials and displays, 2) U S WEST signage, and 3) Notice of special promotions and offers.

c. Preprovisioning (soft dial tone) capability in new construction (subject to network availability).

d. An assigned U S WEST account team.

e. Remittance of payment to Property Owner/Developer for costs associated with the preparation of the property ("Property"). Such payment will be in the amount of $ **REDACTION** (including tax) per eligible unit as specified in Attachment 1.

f. OneStep℠ Program will be included as specified in Attachment 2, which by this reference is incorporated and made part of this Agreement.

3.2. In addition, U S WEST will provide the following other services under this Agreement as indicated by check-mark below:

Check below	Property Owner/Developer selects:
☐	Price discounts on or promotions of Business Voice Messaging Service as describe in Attachment 1.
☐	Price discounts on or promotions of Enhanced FAX Services as described in Attachment 1.
☐	U S WEST will waive nonrecurring installation charge of U S WEST.net Service installed at Property/Owner Developer's leasing office(s).
☐	Property Owner/Developers will receive a discount of 50% off the then retail price on U S WEST

SAMPLE NOT FOR EXECUTION

	supplied pagers (limit six per property specified in Attachment 1). U S WEST supplied pagers purchased by Property Owner/Developer and its Tenants shall include air time for the first thirty (30) days at no charge.
☐	U S WEST Super Savings Calling Plan for Business as described in Attachment 1.
☐	"Up to five (5) free U S WEST Advanced PCS handsets (where U S WEST Advanced PCS service is available)."

3.3. Property Owner/Developer may select one (1) of the following four (4) options:

____ A key telephone system at the Property management office. Under this option, Property Owner/Developer will receive a $3,000.00 credit per Property location covered under this Agreement toward the total retail value of a key telephone system supplied by U S WEST, and which shall be installed at each of the Property management offices.

Or

____ Up to 55 Call Waiting Identification Units. Up to 55 call waiting units will be supplied through U S WEST and are to be used at the Property. Under this option, Property Owner/Developer has the option of purchasing ten (10) or more additional units at discounted prices. U S WEST will supply collateral material for Tenants describing the services available from U S WEST.

Or

Cash Alternative (Property Owner/Developer may select one (1) of the cash alternative options listed below). This Alternative applies per Property:

____ One-time: One-time payment of $1,500.

Or

____ Any combination of cash and Venture Phone(s) to equal $1,500. (A Venture Phone value is $300)

Example:

1 Venture Phone	plus	$1,200
2 Venture Phones	plus	$ 900
3 Venture Phones	plus	$ 600
4 Venture Phones	plus	$ 300
5 Venture Phones	and	$ 0.00

4. PROPERTY OWNER/DEVELOPER OBLIGATIONS. Property Owner/Developer agrees to the following obligations:

4.1. Endorsement and promotion of U S WEST as the preferred full service provider of local telecommunications, including internet access (U S WEST.net), and vendor of choice to all of the Tenants residing at Property. Such endorsement will include, but may not be limited to, the following: 1) supplying literature, brochures and such promotional material as U S WEST may supply from time to time, 2) posting U S WEST signage, and 3) verbally endorsing U S WEST services to the Tenants.

4.2. In its Tenant leasing packet, to make specific and exclusive reference to "U S WEST" as its preferred provider of telecommunications service and include such information as U S WEST may supply on how to order new U S WEST service.

4.3. For Property specified in this Agreement, Property Owner/Developer will not endorse nor enter into another endorsement agreement with any other local telecommunications provider including but not limited

to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

4.4. To purchase for its own use U S WEST local access service and intraLATA long distance service from U S WEST during the term of this Agreement.

4.5. To provide all the necessary and adequate termination space and reusable supporting structures for telephone cable/wire within the building and on their private property as required in state and local tariffs.

4.6. Build facilities from its Demarcation Point at its expense. This Agreement will cover one-hundred (100%) percent of Property Owner/Developer's building(s) units at the locations identified in Attachment 1. Property Owner/Developer will commit a minimum number of _____ units. Construction of this minimum number of facilities shall commence within twelve (12) months of the Effective Date of this Agreement in accordance with U S WEST specifications as indicated in Attachment 1.

4.7. As soon as possible, before any Tenants move in, provide specific street addresses for each building at the Property location, the range of unit numbers in each building, the opening date of the Property leasing office, the first anticipated or scheduled Tenant move in date, the construction schedule including when each building opens or comes online, required telephone service dates, and red-lines or one-line drawings of the Property site.

5. **REVIEW AND ACCEPTANCE.** U S WEST may review services performed by Property Owner/Developer. U S WEST shall notify Property Owner/Developer in writing if the services do not conform to this Agreement. Property Owner/Developer shall correct such nonconforming services within thirty (30) days under this Agreement and within fifteen (15) days for services under Attachment 2, from such notification. U S WEST shall not waive any rights and remedies which U S WEST has or may have under this Agreement or under law.

6. **OWNERSHIP AND PROVISIONING OF SERVICE.** Title to and ownership of all U S WEST supplied equipment and facilities used up to the Property Owner/Developer's Demarcation Point, is and remains with U S WEST. U S WEST will provision and supply the Services described in this Agreement in any manner and by means of any equipment, software, and facilities U S WEST chooses. The method of provisioning of the Services is a matter within U S WEST's sole discretion.

7. **CHARGES AND BILLING.**

7.1. U S WEST shall pay charges due Property Owner/Developer pursuant to this Agreement according to the payment terms specified in Section 8, below.

8. **PAYMENT TERMS.** U S WEST's payment to Property Owner/Developer for the $ **REDACTION** per unit fee at the location(s) specified in Attachment 1 shall be made in two (2) installments, according to the following schedule:

8.1. A payment of 50% of the price agreed to (per each location specified in Attachment 1) will be made upon commencement of construction at the location. Property Owner/Developer will notify U S WEST of such date and provide proof of such commencement as determined by U S WEST, and U S WEST shall have thirty (30) days from the receipt of such notification in which to tender said payment.

8.2. The final payment of 50% of the price (per location specified in Attachment 1) will be made upon final acceptance by U S WEST. U S WEST's acceptance shall be based upon the location's readiness for Tenant occupancy. U S WEST shall have thirty (30) days from said acceptance to tender the final payment.

9. ADVERTISING; PUBLICITY.

9.1. Property Owner/Developer acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and U S WEST respectively, and that nothing contained in this Agreement is intended as an assignment or grant to Property Owner/Developer of any right, title or interest in the Marks. Other than U S WEST supplied material pursuant to Section 4, above, reference to or use of U S WEST's name, logo, or "Marks" in any advertising, promotional efforts or publicity ("Promotional Material") by Property Owner/Developer will be granted by U S WEST only under the following conditions:

a. Property Owner/Developer must first submit the Promotional Material to U S WEST and receive U S WEST's prior written approval.

b. The Promotional Material shall not be used in connection with any goods or services other than U S WEST services.

c. Upon termination of this Agreement, all permission to use the Promotional Material shall cease to exist and Property Owner/Developer shall either promptly return Promotional Material to U S WEST or destroy it.

9.2. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any copyrighted material, logo, trademark, trade name, or any other intellectual property right now or hereafter. U S WEST makes no warranties regarding its ownership of any rights in or the validity of the Marks.

10. CANCELLATION OF AGREEMENT FOR DEFAULT.

10.1. Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. If U S WEST terminates this Agreement for cause prior to the expiration of the term of this Agreement, Property Owner/Developer shall remit to U S WEST a termination charge of Forty Dollars ($40.00) per unit for each year remaining in the term of this Agreement. If Property Owner/Developer terminates this Agreement without cause, or if U S WEST terminates this Agreement for cause, prior to beginning construction of the minimum number of units as specified in Section 4.6, Property Owner/Developer shall remit to U S WEST all payments received from U S WEST. Cause is any material breach of the terms of this Agreement.

10.2. This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the other party is appointed for any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

11. LIMITATION OF LIABILITY.

11.1. NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING COMMERCIAL LOSS, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH DIRECTLY OR INDIRECTLY ARISES FROM THE SERVICES OR EQUIPMENT PROVIDED BY U S WEST.

11.2. EACH PARTY IS RESPONSIBLE TO THE OTHER FOR ACTUAL, PHYSICAL DAMAGES DIRECTLY CAUSED IN THE COURSE OF ITS PERFORMANCE UNDER THE AGREEMENT, BUT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH, OR TO TANGIBLE PROPERTY ARISING IN EACH CASE FROM ITS NEGLIGENT ACTS OR OMISSIONS.

12. UNCONTROLLABLE CIRCUMSTANCES. Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

13. CONFIDENTIAL INFORMATION. Property Owner/Developer may receive or have access to records and information, whether written or oral, which U S WEST considers to be confidential and proprietary, including technical information such as specifications, drawings, and technical guidelines. Such information shall be designated by U S WEST as confidential and/or proprietary, and Property Owner/Developer shall hold such confidential or proprietary information, including this Agreement, in trust and confidence for U S WEST, shall use it only for the purposes permitted hereunder, and shall deliver to U S WEST all such records and information, in written or graphic form, upon expiration or termination of this Agreement. Nothing in this section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.

14. DISPUTE RESOLUTION.

14.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA").

14.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

14.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

14.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

15. LAWFULNESS. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where the Property is located.

16. SEVERABILITY. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, and the terminated provision is not material in implementing the intentions of the parties hereto, the remainder of this Agreement shall continue in effect.

17. GENERAL PROVISIONS.

17.1. Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

17.2. In the event Property Owner/Developer transfers the Property, Property Owner/Developer shall provide U S WEST with notice of the transfer of property, as well as the name, address, and telephone number of the successor-in-interest, at least thirty (30) days prior to the transfer. Property Owner/Developer shall ensure that this Agreement is assigned to its successor-in-interest. However, if Property Owner/Developer attempts to assign this Agreement to a telecommunications company, or any parent, subsidiary, or affiliate thereof, U S WEST may terminate this Agreement, and Property Owner/Developer shall remit to U S WEST a termination charge under the formula set forth in Section 10. above. This Agreement may not be assigned to a telecommunications reseller or telecommunications carrier under any circumstances.

17.3. This Agreement constitutes the entire understanding between Property Owner/Developer and U S WEST with respect to service provided herein and supersedes any prior agreements or understandings.

17.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same agreement.

18. EXECUTION. The parties hereby execute and authorize this Agreement including any Attachment(s), Addenda or Supplements hereto, as of the latest date shown below:

	U S WEST Communications, Inc.
_____	
_____	_____
Signature	Signature
_____	_____
Name Typed or Printed	Name Typed or Printed
_____	_____
Title	Title
_____	_____
Date	Date
Address for Notices:	Address for Notices:
	U S WEST Communications, Inc. Community Developer Group Attn: Matthew Terry 5090 N 40th St., Room 270 Phoenix, AZ 85018

ATTACHMENT 1

This Attachment to the Agreement pertains to the Service(s) described below. Where terms or conditions of this Attachment 1 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 1 shall take precedence. The Agreement covers Property Owner/Developer's Property at the following locations and numbers of units. Such Property location must be within U S WEST's serving area.

Property Locations (s)	# of Units	Construction Start Date
Total Number of Units		

Business Voice Messaging Service offer:

Property Owner/Developers selecting this offer will receive one (1) mailbox **at no charge** per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Property Owner/Developer will also receive optional features selected at no charge, as shown below.

Service	Regular Price		Special Offer
	Monthly	Installation	
Mailbox	REDACTION	REDACTION	REDACTION
Extension Mailbox Feature	REDACTION	REDACTION	REDACTION
Message Notification Feature	REDACTION	REDACTION	REDACTION
Scheduled Greeting Feature	REDACTION	REDACTION	REDACTION

*NOTE: Extension Mailbox Feature and Scheduled Greeting feature are not available on the same line.

Enhanced FAX Service offer:

Property Owner/Developers selecting this offer will receive U S WEST Enhanced FAX Services **at no charge** for nonrecurring and monthly recurring charges per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Except as noted below, applicable usage charges will apply. Usage credit available through this Special Offer will be applied and any remaining credit balance from the Special Offer will be carried forward.

Service	Regular Price		Special Offer
	Monthly	Installation	
Broadcast FAX or FAX Mail Plus	REDACTION	REDACTION	REDACTION
FAX Request Price Plans B & C	REDACTION	REDACTION	REDACTION
FAX Request Price Plans D & E	REDACTION	REDACTION	REDACTION
Never-Busy FAX	REDACTION	REDACTION	NO CHARGE

Super Savings Calling Plan for Business offer:

Property Owner/Developers selecting this offer will receive the U S WEST Super Savings Calling Plan for all local long distance calls for the Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region).

ATTACHMENT 2

This Attachment 2 to the Agreement pertains to the service(s) described below. In addition to those stated herein, all terms and conditions of the Agreement shall apply. Where terms or conditions of this Attachment 2 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 2 shall take precedence.

PROPERTY OWNER/DEVELOPER MARKETING SALES THROUGH ONESTEP SM PROGRAM

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

1. SCOPE OF AGREEMENT. U S WEST is a provider of telecommunications service ("Services"). Property Owner/Developer is in a business that allows it to take orders for U S WEST Services from Tenants moving into the Property covered by this Attachment 2 using the U S WEST OneStep℠ Program ("OneStep℠" or "Program"). The Program allows the Tenants to request U S WEST Services through the Property Owner/Developer without a call to the U S WEST business office. Property Owner/Developer will not promote, sell or offer Services identified in this Agreement that are supplied by a provider of such service other than U S WEST. The locations of the Properties covered by this Attachment 2 are as specified in Exhibit 1. In return for each completed sale through the OneStep℠ Program, U S WEST will compensate Property Owner/Developer according to the compensation schedule specified in Exhibit 1, incorporated and made part of this Attachment 2 by this reference. This Attachment 2 sets forth the parties obligations relating to the OneStep℠ Program and such additional terms and conditions as may apply and the parties performance relating to this Attachment 2.

2. APPOINTMENT OF PROPERTY OWNER/DEVELOPER. U S WEST hereby appoints Property Owner/Developer as its non-exclusive limited agent to sell U S WEST Services and perform responsibilities specified herein under the terms and conditions contained in this Attachment 2. During the term of this Attachment 2 and thereafter, U S WEST reserves the right, without obligation or liability to Property Owner/Developer, to market its Services, whether through its own representatives, other agents, or by any other means. Property Owner/Developer hereby accepts such appointment and certifies that, except as specifically provided for herein, it is capable of performing all of its obligations under this Attachment 2. Property Owner/Developer shall perform the duties specified herein only in relation to Services covered by this Attachment 2 and set forth in Exhibit 1. U S WEST may, from time to time, modify Exhibit 1 by providing thirty (30) days written notice. Property Owner/Developer is authorized to perform the responsibilities covered by this Attachment only at the locations specified herein. It is expressly understood and agreed that the agency created herein is a limited agency, and that Property Owner/Developer shall have only those rights and responsibilities specifically described in this Attachment 2 for Default. U S WEST may, at its sole discretion, with fifteen (15) days prior written notice, suspend or terminate this Attachment 2 if Property Owner/Developer's activities do not satisfy U S WEST's professional or ethical standards, or if U S WEST has reasonable suspicion that Property Owner/Developer or any of Property Owner/Developer's leasing personnel have not fully complied with performance required under this Attachment 2.

3. COMPENSATION. Compensation for the services performed by Property Owner/Developer hereunder shall be as specified in Exhibit 1. The compensation agreed to herein shall be the total compensation due to Property Owner/Developer under this Attachment 2 and will by paid only in accordance with the terms of this Attachment 2. U S WEST will provide, within twenty (20) business days after the end of each month, a list of the Completed Orders ("Completed Orders"), as defined herein, and the products sold on those orders, as well as the total compensation for all orders and products. U S WEST will render no more than one (1) compensation check to Property Owner/Developer each month, regardless of the number of Properties listed under this Attachment 2 or managed by the Property Owner/Developer.

4. PROPERTY OWNER/DEVELOPER OBLIGATIONS.

4.1. Property Owner/Developer shall market, promote, solicit, and take orders for U S WEST Services for their new Tenants on behalf of U S WEST. Property Owner/Developer shall be available and responsive to questions regarding U S WEST Services from its Tenants during its normal business hours.

4.2. Property Owner/Developer shall display signage indicating availability of U S WEST Services through the OneStep℠ process. In addition, Property Owner/Developer will, at its own expense, provide, own, and maintain a fax machine to send OneStep℠ service orders directly to the U S WEST Client Service Center and maintain a sufficient supply of forms, collateral materials, price lists, etc. Property Owner/Developer shall provide U S WEST at least three (3) weeks lead time in order to replenish supplies its orders for such forms and collateral. For all Properties covered under this Attachment, U S WEST will mail all such forms and collateral to Property Owner/Developer at the following address:

_____

_____

4.3. Prior to taking orders for Services, Property Owner/Developer shall attend the training necessary to use U S WEST order forms. Property Owner/Developer will ensure that it will train its leasing staff and provide any updates to training on a timely basis. Property Owner/Developer shall ensure that all service orders sent to the U S WEST Client Service Center facsimile number are substantially error free. For Tenant questions that Property Owner/Developer personnel cannot answer and for information on the services of U S WEST that are not included in Exhibit 1, Property Owner/Developer shall assist the Tenant in contacting U S WEST's offices.

4.4. Property Owner/Developer shall ensure that orders for Services taken by its personnel are solely at the OneStep℠ prices and terms specified by U S WEST. Such prices, terms, and conditions are subject to change at the sole discretion of U S WEST and are effective upon written notice to Property Owner/Developer. Property Owner/Developer shall ensure that its personnel use the most current U S WEST prices, terms, and forms when taking orders for network services. Property Owner/Developer is not authorized to alter, orally or in writing, any U S WEST price, term, or condition on any U S WEST form. Property Owner/Developer shall not make any representations or warranties concerning this Program or network services, or impose any conditions, directly or indirectly, other than those expressly authorized by U S WEST.

4.5. U S WEST, at its sole discretion, can accept or reject any order. No order shall be final until U S WEST accepts such orders. Property Owner/Developer shall have no authority to approve or accept any orders on behalf of U S WEST. All orders obtained by Property Owner/Developer shall be promptly forwarded to U S WEST for acceptance, rejection, or comment. U S WEST reserves the right to cancel or terminate any order, or to permit the Tenant to cancel or terminate any order, in whole or in part, at U S WEST's sole discretion.

4.6. U S WEST has sole authority to determine which U S WEST products or services are offered through the OneStep℠ process. U S WEST reserves the right to add, delete, or change any portion of U S WEST's Services offered through OneStep℠.

4.7. For Property specified in this Attachment 2, Property Owner/Developer will not act as an agent for, or enter into another agency agreement with, any other local or intraLATA telecommunications provider or reseller, including but not limited to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

4.8. If Property Owner/Developer pays compensation to its Property management personnel, Property Owner/Developer shall determine, establish, administer and distribute any such compensation that it may remit to such Property management personnel.

5. U S WEST OBLIGATIONS.

5.1. U S WEST will provide the Property Owner/Developer with sufficient quantities of the OneStep℠ forms, collateral materials, signage indicating availability of OneStep℠ Program, price sheet and U S WEST Disclosure Statement forms.

5.2. U S WEST will provide initial training to Property Owner/Developer at a single location to be mutually agreed upon. Any additional training will be conducted by Property Owner/Developer to its leasing staff pursuant to Section 5.3. of this Attachment. Training will include in-depth detailed instructions pertaining to the OneStep℠ service order forms and process and product/price information regarding Services available through the OneStep℠ program.

5.3. U S WEST will initially provide up to thirty (30) training manuals to Property Owner/Developer. If additional manuals are required during the term of this Agreement, U S WEST hereby grants permission to and Property Owner/Developer hereby agrees to make copies of said training materials for its own use and at its own expense.

6. INSURANCE AND INDEMNITY. Without limiting in any way the indemnification obligations set forth herein, the parties shall each maintain, at their own expense, workers' compensation insurance to provide protection against claims under applicable workers' compensation laws and employer's liability. Additionally, commercial general liability insurance, including contractual liability coverage for insurable obligations assumed hereunder, and personal injury coverage shall be maintained. Such insurance shall provide protection against claims and liability including, but not limited to, claims for bodily injury or property damage, which may arise or result from the activities as set forth herein. At U S WEST's request, Property Owner/Developer shall furnish satisfactory proof of insurance coverage. Each party to this Agreement hereby agrees to defend, indemnify, and hold harmless the other party and its affiliated companies, and their directors, officers, employees, agent, successors, and assigns, from and against any liabilities, claims, costs, losses, and expenses, including attorney fees, incident to or resulting from its negligent acts and omissions related to this Agreement. In no event will U S WEST be held liable for incidental, special, or consequential damages to anyone arising out of this Attachment 2.

7. CONFIDENTIAL INFORMATION. Property Owner/Developer may receive or have access to records and information, whether written or oral, which U S WEST considers to be confidential and proprietary, including but not limited to U S WEST customer information and information which relates to U S WEST's present and future development of business activities. Property Owner/Developer shall hold such confidential and/or proprietary information in trust and confidence for U S WEST, and shall use it only for the purposes permitted hereunder. Nothing in this Section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.

8. CANCELLATION OF AGREEMENT FOR DEFAULT.

8.1. Either party may terminate this Attachment 2 for cause, provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Attachment 2.

8.2. This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the other party is appointed for

any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

EXHIBIT 1

Property Location(s):

U S WEST OneStep℠ Compensation Schedule. U S WEST will compensate the Property Owner/Developer according to the following schedule for Completed Orders:

COMPLETED ORDERS:	COMPENSATION PER LINE	MINIMUM # OF MONTHS IN SERVICE
New Connect and T Orders	REDACTION	3
Packages:		
CustomChoice™ (Compensation includes $9.00 per order compensation)	REDACTION	3
ValueChoice (Compensation includes $9.00 per order compensation)	REDACTION	3
Features:		
U S WEST Call Waiting	REDACTION	3
U S WEST Caller ID	REDACTION	3
U S WEST Caller ID with Privacy	REDACTION	3
U S WEST No Solicitation	REDACTION	3
U S WEST Voice Messaging	REDACTION	3
U S WEST Custom Ringing	REDACTION	3
U S WEST Three Way Calling	REDACTION	3
U S WEST Call Forwarding	REDACTION	3
U S WEST Continuous Redial	REDACTION	3
U S WEST Last Call Return	REDACTION	3
U S WEST Call Rejection	REDACTION	3
U S WEST Priority Call	REDACTION	3
U S WEST Additional Line	REDACTION	3
U S WEST Speed Dialing	REDACTION	3
U S WEST Listings	REDACTION	N/A
U S WEST LineBacker Services	REDACTION	3
U S WEST Calling Card	REDACTION	N/A
U S WEST Paging	REDACTION	3
U S WEST.net Internet Access (where available)	REDACTION	3
U S WEST Local Long Distance Calling Plans (where available)	REDACTION	3

Compensation will be paid one (1) month in arrears of U S WEST Service provisioning. Compensation will also be paid for features sold to existing U S WEST customers. However, no other compensation (i.e., order fee) will be included in these instances. U S WEST will check the product and service retention at the end of ninety (90) days to determine the number of features dropped. Any lines or features not in place ninety (90) days after Service was ordered will be deducted from the current month's compensation calculation. Upon termination or expiration of this Attachment 2 by either party, U S WEST will withhold compensation for one hundred twenty (120) days to allow for a "truing up" period. Final compensation payments will be rendered upon completion of the one hundred twenty (120) day period.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	)	DOCKET NO. 97I-198T
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	)	DOCKET NO. 99A-577T

AT&T'S AND WCOM'S RESPONSE TO U S WEST'S POSITION REGARDING ACCESS TO RIGHTS OF WAY AND PRIVATE RIGHT OF WAY AGREEMENTS

AT&T Communications of the Mountain States, Inc., ("AT&T") TCG Colorado ("TCG") and WorldCom, Inc. ("Wcom") (collectively "Respondents") hereby submit their responsive comments to Qwest Corporation's f/k/a U S WEST Communications Inc. ("Qwest") new proposals for access to rights-of-way ("ROW") and private right of way agreements.

I. INTRODUCTION

Action items related to Issues 3-3 and 3-4 in the Colorado Issues Log required Qwest to recommend redaction principles and provide examples employing such principles. As part of its response to these issues, Qwest included additional extensive revisions to its SGAT. As described in more detail below, Qwest's proposals now make Qwest's satisfaction of Checklist Item # 3 even less plausible.

As described in AT&T's and WCom's Response to Qwest's Recommended Redaction Principles For Third Party Contracts, it seems that neither Qwest nor the CLECs are in material disagreement with respect to the narrow issue of redaction principles and their application. Therefore, this specific sub-issue could be closed promptly at the next workshop.

However, Qwest's extensive revisions require consideration. And although AT&T greatly appreciates the work done by Qwest to help resolve the issues brought by the CLECs to the collaborative workshops, some of the additional issues raised by Qwest's efforts in their comments do not adequately respond to the concerns expressed by CLECs in the earlier workshop. Accordingly, Respondents will outline some of these issues in these comments and expect that the parties will discuss them thoroughly at the next workshop.

Respondents have included in this filing revisions to Qwest's recently proposed language, specifically Qwest's proposed changes to Section 10.8 of the SGAT and Exhibit D[1]; the revisions are attached hereto as **Attachment 1** and **Attachment 2**, respectively. In these comments, Respondents have categorized some of these revisions and their related issues to provide a deeper explanation of the limitations of Qwest's proposals. In particular, the Respondents' comments relate to: (a) Qwest's requirements

[1] Although the Respondents took great efforts to ensure that all changes reached by consensus were preserved in the attached drafts, the vagaries of the parties' word processing systems may have resulted in inadvertent deletion or retention of text in this draft. Respondents agree that Qwest should retain control over the document and include these revisions in their master document if consensus is reached. For example, AT&T and Wcom attacked Sections 10.8 (reciprocity) and 10.8.4 and Exhibit D (standard inquiry) in their brief filed July 21, 2000, but have not modified those sections or Exhibit D consistent with those arguments in the attachments to this Response. Therefore, the fact that the chart found in Section 2.2 of Exhibit D is in the attachments to this response, for example, does not mean that AT&T and Wcom have withdrawn their arguments contained in the joint brief.

regarding consent, (b) Qwest's position regarding the transfer interests in rights of way pursuant to a "quitclaim" agreement, and (c) certain other miscellaneous issues. Respondents will address each of these areas in turn.

II. DISCUSSION

A. U S WEST'S PROPOSAL TO REQUIRE CONSENT OF LANDOWNERS IS UNNECESSARY AS A MATTER OF LAW AND CONTRARY TO SOUND POLICY. MOREOVER, IT IS BURDENSOME TO BOTH LANDOWNERS AND CLECS AND IT IS DISCRIMINATORY.

Qwest has revised its SGAT to include extensive new requirements for a CLEC to obtain consent of a property owner before disclosure or transfer of any rights of access to a ROW. As explained below, these new requirements are generally unnecessary and create extraordinarily time- and resource- intensive burdens on landowners as well as CLECs who attempt gain nondiscriminatory access to rights of way as provided under the Telecommunication Act of 1996 (the "Act").

1. Qwest's Consent Proposal Is Generally Unnecessary.

Qwest's extensive new consent requirements are not required by the law and are inconsistent with sound public policy. Further, because such consent requirements are apparently not required of Qwest itself, or its affiliates, Qwest's consent proposals are discriminatory, in violation of both state and federal law. Qwest's proposals require CLEC's to obtain the consent of a owner whose property is subject to an easement, license, "Agreement for New Multi-Tenant Residential Properties" or similar right of way agreement ("ROW agreement") for two discrete actions: (1) the disclosure of an underlying ROW agreement and (2) conveyance of an interest to the CLEC to have

access to the ROW ("Quitclaim"). See SGAT Exhibit D, ¶ 2.2, and Exhibit D, Attachment 4. Qwest's proposal requires consent to these items to be made simultaneously at the "order" stage. SGAT Exhibit D ¶ 2.2.

The law does not mandate the "consent" of the landowner to disclosure and use of Qwest's ROW before Qwest must provide access. The Act mandates that Qwest provide access to that which it owns or controls. Neither the Act nor the FCC's rules and orders impose any requirement for a CLEC to obtain the consent of a landowner for access to rights of way. 47 U.S.C. § 251(b)(4); Local Competition First Report and Order, §§ 1119 – 1158.[2] Indeed, the law requires that U S WEST must establish a nondiscriminatory processes to expedite access to ROWs: "Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[3]

Qwest seems to base its proposal on a misunderstanding that state and local law requires it to obtain consent of a landowner for every transfer of an interest in a right of

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[2] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996)("Local Competition First Report and Order"), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 177 F.3d 1068 (8th Cir. 1997) and Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999).

[3] Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana, CC Docket No. 98-121, FCC 98-271, (released October 13, 1998) ¶ 176 ("BellSouth Second Louisiana Order") (citing Local Competition First Report and Order, 11 FCC Rcd. at 16067.

way or similar instrument.[4] In Colorado, it is clear that "'[i]n the absence of an express provision against assignments, a contract which does not involve personal skill, trust or confidence is assignable without the consent of the other party . . . .'" Matson v. White, 220 P.2d 864, 866 (Colo. 1950) (agreement to provide water to transferee of property assignable because of absence of prohibition in contract); Parrish Chiropractic Centers v. Progressive Casualty Ins. Co., 874 P.2d 1049, 1052 (Colo. 1994)(contract rights are generally assignable). In fact, this principle is so well settled that it has become axiomatic. See 6 C.J.S., Assignments, § 24, p. 1070; 4 Am. Jur., p. 238, § 11.

Neither the ROW agreements submitted by AT&T as Exhibits 58 and 59 in Workshop No. 1 nor the ROW agreements supplied by U S WEST contain any such consent requirement. Indeed, some of the very ROW agreements supplied by U S WEST contain provisions that suggest that Qwest entered into agreements with landowners deliberately excluding such clauses and intending that such agreements would be assignable. First, the sample agreement submitted by AT&T at Exhibit 59 contains a restriction on assignment that prohibits the *landowner*, not Qwest, from assigning the contract. See Qwest's Form Agreement for New Multi Tenant Properties, ¶ 17.2. This provision is included for the benefit of Qwest; the agreement does not include a corresponding promise for the benefit of the landowner. Similarly, some ROW documents expressly require notice, not consent, to be made by one party to another. For

[4] Qwest cryptically refers to agreements being protected by "expectations of privacy." Qwest's use of the term is confusing. The term "expectation of privacy" arises principally in Constitutional law Fourth Amendment jurisprudence. See, e.g. U.S. v. Long, 176 F.3d 1304, 1308 (10th Cir. 1999). In the rare instances the term appears outside of Constitutional law in Colorado, the term has been used in cases in which a party to litigation attempts to seal court records that otherwise reveal personal information. See Anderson v. Home Insurance Co., 924 P.2d 1123, 1127(Colo. Ct. App. 1996) (claim that court files contain extremely personal and confidential matters not sufficient to constitute privacy interest sufficient to seal court files), see also In re Marriage of Purcell, 879 P.2d 468, 469 (Colo. Ct. App. 1994).

example, Qwest's Form Agreement for New Multi Tenant Properties contains a provision that requires the landowner, not Qwest, to notify Qwest of a transfer of the subject property. See Id. ¶ 13. Like the provision requiring the consent of Qwest before a transfer by the landowner, this provision benefits Qwest and the agreement does not contain any corresponding promise by Qwest to the landowner. Not only is Qwest's implication that is seeking to protect landowners somewhat disingenuous in light of these one-sided arrangements, Qwest's assertion that the agreements are not assignable is contrary to the reasonable implications of these provisions.

Finally, at least two of the ROW agreements contain provisions that permit the agreement to be construed with and be subordinate to applicable "laws, tariffs and regulations." See Telephone License Agreement ¶ O; see also, Agreement for New Multi-Tenant Residential Properties (marked 07/17/200/ENDRS/Initials/Saros) ¶ 15. These provisions anticipate Commission action and put the landowner on notice that the Commission could act in a way that would affect the agreement. Accordingly, Qwest's agreements do not have an express prohibition against disclosure or transfer and, not only does the law not imply a prohibition on such disclosure or consent, Qwest's very agreements are appropriately construed to permit such assignment or disclosure.

Clearly, controlling state law does not require the consent of a landowner to access by a CLEC to Qwests ROWs in the absence of an express provision requiring such consent. Similarly, consent should also not be required to the lesser intrusion of disclosing the instrument creating the right of way. Indeed, applicable FCC rules suggest that U S WEST cannot impede a CLEC's access to ROWs. See Bell South Louisiana II 271 Order, ¶ 176.

Thus, the addition of Qwest's consent requirements, which are not only unnecessary but, as described below, also burdensome, cannot be interpreted as anything more than an impediment to a CLEC's access to ROWs. Instead of moving closer to closure of this issue, Qwest's recent proposal makes Qwest's satisfaction of Checklist Item 3 even more dubious.

Where Qwest demonstrates that certain ROW agreements require consent to "assignment" or other transfer and do not put the landowner on notice that the agreement is subject to applicable laws, tariffs and regulations, Respondents would not object to inclusion in the SGAT certain limited and reasonable provisions designed to obtain and expedite such consent wherever necessary.[5] However, such provisions must not be burdensome and must ensure that Qwest does not use its incumbent status to impose such consent requirement on landowners.[6] This is especially important on a going-forward basis, and Qwest should not now be permitted to avoid the objectives of the Act and this commission by entering into agreements that, specifically impose requirements on property owners to obtain their consent. In a spirit of full disclosure, the Commission may wish to ensure that a property owner understands that such rights of way may be utilized by CLECs.

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[5] AT&T reserves its rights to challenge whether access mandated by the Act triggers such consent requirement and AT&T's rights to argue that federal law pre-empts such requirements.

[6] See AT&T's proposal at SGAT § 10.8.2.25. AT&T's proposal at, is merely a adaptation of the acknowledgement that Qwest attempts to impose on a landowner in it's form of consent. See SGAT, Exhibit D, Attachment 4. Consent (hereinafter, "Consent") ¶3. It is also consistent with the comments of the Office of Consumer Counsel. See The Colorado Office of Consumer Counsel's Comments on Private Rights-Of-Way Agreement at pp. 2-3.

2. Qwest's Consent Proposal Is Burdensome.

Regardless of whether Qwest's consent provisions are necessary or required by law, Qwest's proposal sets forth detailed obligations that it seeks to impose not only on CLECs but also on landowners. These requirements are unduly burdensome and amount to an impediment to a CLEC's access to ROWs.

a. The Proposal is Burdensome to Landowners. Qwest's consent proposal imposes on landowners numerous requirements (including, of course, the generally unnecessary requirement that a landowner must consent to a transfer). Specifically, Qwest's proposed form of Consent impose on the landowner the following obligations: representations and warranties that the landowner is indeed the owner of the subject property or the grantor of "Easement Rights" (Consent, ¶ 2); representations and warranties that landlord can execute the consent, "waive the confidentiality" of the ROW agreement, bind the owner and grant certain notice and cure rights (Consent, ¶ 2); acknowledgments about the legal import of the Consent, that the Consent will be recorded (Consent, ¶3); acknowledgement that it can enter into a ROW agreement with the CLEC (Consent, ¶3); waiver of any right to confidentiality (Consent, ¶ 4); requirement to notify Qwest in the event of a "default" by CLEC (Consent, ¶ 5); grant of right to U S WEST to cure such "default" (Consent, ¶ 5); promise that landowner will not invoke any remedies during the notice and grace period (Consent, ¶ 5); and additional notice requirements (Consent, ¶ 6).

Qwest has crafted an onerous document that is unlikely to be welcomed by any landowner. The likely result will be a protracted, tripartite negotiation between CLEC,

landowner and Qwest. Accordingly, the provisions set forth in Qwest's proposed Consent and Qwest's refusal to provide access to ROWs under any circumstances without such Consent, make it unlikely that a CLEC will be able to expeditiously obtain access to such ROWs.

b. The Proposal is Burdensome to CLECs. In addition to the burdens imposed by Qwest on the landowner, Qwest imposes numerous burdens on the CLEC. Except as discussed below, these comments will not address in detail the additional burdens imposed on the CLEC. Instead, even a cursory review of Section 10.8, Exhibit D and Attachment 4 outline the additional obligation imposed on the CLEC (including contacting landowners, securing acknowledgements and execution, recording the document, etc.).

However, these comments will address one unreasonable burden imposed on CLECs by Qwest. As described above, Qwest requires consent to two discrete actions, disclosure and conveyance. Although Respondents have demonstrated that only in certain limited circumstances is consent to either action required as a matter of law or policy, Qwest's consent proposal permits a CLEC to review a ROW agreement only after the CLEC has entered into a "Quitclaim"—effectively agreeing to the transfer of an interest-- agrees to be bound by its terms, made all payments and has secured a Consent. See Exhibit D, ¶ 2.2. Qwest is offering CLECs the proverbial pig-in-a-poke. Such a result is absurd and makes Qwest's proposal to permit disclosure of ROW agreements and access to ROWs meaningless: no reasonable CLEC would permit itself to be subject to provisions it has not had an opportunity to review. Qwest should provide CLECs early and expeditious review of these ROW agreements before it obtains access.

3. Qwest's Consent Proposals Are Discriminatory.

In addition to being unnecessary and burdensome, Qwest's consent proposal is discriminatory because, Qwest requires a CLEC to comply with arrangements that are more burdensome to CLECs than to itself. Specifically, under Qwest's proposal, CLEC's incur liabilities that are greater than those incurred by Qwest. Further, in Respondent's reasonable belief, Qwest does not obtain consent in every instance in which transfer of an interest from Qwest is made.

a. Qwest Requires CLECs to Incur Greater Liabilities than It Incurs Itself. As described above, Qwest imposes on CLECs myriad detailed requirements that CLECs do not require of themselves. Some of these requirements impose on CLECs materially greater liability than Qwest incurs in the enjoyment of the same ROWs. Qwest's proposal requires CLECs to enter into extensive indemnification covenants with both Qwest and a landowner as a condition of its "Quitclaim Right of Access Agreement." See Draft Quitclaim Right of Access Agreement ¶ 6.[7] Such indemnification imposes on CLECs liability for relocation and construction of facilities in the event of a termination or impairment of the ROW caused by a CLEC. It does not impose a similar obligation on Qwest who, after all, will continue to have non-exclusive rights to the ROW and from whose rights all of CLECs will be derived. Respondents proposal is to make this provision apply to both Qwest and CLEC.

[7] Qwest's indemnification proposal also provides for CLEC (not Qwest) to indemnify the landowner. It is unclear whether this indemnification would be effective. Not only is the landowner not a party to the agreement, the agreement expressly provides that "[t]here are no intended third-party beneficiaries to this agreement." See Draft Quitclaim Right of Access Agreement, ¶ 11. Further, the SGAT already sets forth indemnification provisions. See SGAT § 5.8.

Not only does Qwest not incur the same degree of responsibility to CLECs as CLECs do to Qwest, under Qwest's proposal CLECs would incur more liability to the landowner than Qwest incurs itself. As stated above, paragraph 6 of Qwest's draft "Quitclaim Right of Access Agreement" sets forth an indemnity of Owner by CLECs. Such indemnity is different and more extensive than the indemnities given by Qwest to the Landowner, which in some instances, is arguably, none. See Agreement for New Multi-Tenant Residential Properties, ¶ 11. In other instances, Qwest carves out extensive limitations to its liability not found in its SGAT proposal. See Telephone License Agreement, ¶¶ III.A and III.C. In still other agreements, Qwest's indemnification of a landowner is perfunctory. See Easement Agreement, ¶2. In short, Qwest seeks from CLECs a discriminatorily broad indemnification and refuses to indemnify CLEC.

b. Qwest Does Not Obtain the Consent of Landowners. As described above, in the absence of a prohibition of transfer without consent, a party to an agreement may freely assign it. This legal principle is clearly understood by Qwest. Recently, U S WEST was acquired by Qwest. Such acquisition resulted in a change of control which resulted in new entity succeeding to the interests of the old U S WEST under all of U S WEST's ROW Agreements. Did U S WEST and Qwest seek consent from every property owner subject to a ROW agreement, including those whose ROW agreements were silent on the necessity for consent? Such a circumstance is unlikely. Further, Qwest has recently entered into agreements in which entire exchanges have been transferred wholesale to third parties. Did U S WEST and the transferee seek consent from property owners in those transactions? Again, such a circumstance is unlikely.

Finally, certain affiliates of Qwest may utilize its ROWs to provision there own services.[8] Qwest is unlikely to obtain consent of landowners to share their ROWs with these affiliates.

In all likelihood, Qwest sought consent only from those entities with whom U S WEST had entered into agreements that specifically required consent under such circumstances. Commonly, any business, including Qwest, will seek to negotiate rights to permit free transferability property interests. Such free transferability limits subsequent transaction costs. Rarely will a business commit itself to the extensive consent requirements Qwest now assumes, wrongly, must be imposed on CLECs.

As demonstrated, the law favors such arrangements and will construe an agreement that is silent on the requirement of consent to permit free transferability and disclosure. Qwest liberally takes advantage of the favors of the law. Respondents believe that they are entitled to the benefits of the law and the privileges Qwest affords itself. Indeed, the Act requires nondiscriminatory access to poles, ducts conduits and rights of way.

B. U S WEST'S PROPOSAL TO PROVIDE QUITCLAIM ACCESS TO ROWS IS INAPPROPRIATE AND DISCRIMINATORY.

Qwest proposes to permit access to rights of way through the execution of a "Quitclaim Right of Way Access Agreement." Qwest's approach is a cynical attempt to meet the nominal requirements of Checklist Item #3 without an express commitment to provide such access in a non-discriminatory way.

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[8] In particular, AT&T is aware of an affiliate of U S WEST, known as U S WEST Broadband, that has sought exemptions from certain local service regulation in the State of Arizona. The services to be offered by such entity would very likely require access to the same kinds of ROWs that other CLECs would require.

Qwest accurately assesses the legal import of a "quitclaim" conveyance: such a conveyance passes whatever claim or title the grantor has to particular property but excludes any implication that the grantor has any rights, title or interest to that property. In short, under a quitclaim, the groom who agrees to marry his bride does not say "I do," but rather says "I do, to the extent I have any capacity whatsoever to love, honor and cherish, but keep in mind that I have not made any such representation or warranty and that you may not take any such implications from my actions or inaction."

However, the hoary and subtle principles of property law raise real questions as to whether Qwest's quitclaim proposal amounts to proper access to ROWs as mandated by the Act. As employed in the traditional world of property law conveyance, "[t]he distinguishing characteristic of a quitclaim deed is that it conveys the interest or title of the grantor in and to the property described, rather than the property itself." 23 Am. Jur. 2d Deed § 259; see Tuttle v. Burrows, 852 P.2d 1314, 1315 (Colo. Ct. App. 1992) "Access" as mandated by the Act would seem to require a meaningful opportunity to use a real and tangible right, not an abstract "interest" or "title." See Local Competition First Report and Order, §§ 1151 – 1155. Indeed, 271 approval can only be granted after a showing that a checklist item is "generally offered to all interested carriers, be genuinely available, and be offered at concrete terms."[9] Qwest's proposal to provide "quitclaim" access to ROWs does not seem to approach this level of definiteness.

[9] In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, "Evaluation of the United States Department of Justice", CC Docket No. 97-208 (November 4, 1997) at 13.

In addition, Qwest's use of a quitclaim and its stated antipathy to conveying an interest at all in certain ROW agreements create serious questions about whether certain obligations on Qwest to provide access to ROWs on a continuing basis will be recognized at all. Because Qwest has repeatedly stated that it does not believe that certain ROW agreements afford itself a ROW, it is unclear whether Qwest is sincere that it would recognize and not challenge a CLECs access under such a "quitclaim." Qwest appears to imply that by using a quitclaim it will not only avoid making representations and warranties about the ROW, but also be absolved from any continuing obligations to maintain the ROW for access.

Finally, Qwest's quitclaim proposal is discriminatory. It takes advantage of the full benefits of its ROWs and does not have to rely on an ethereal and indefinite "quitclaim" interest. Its opportunities under its ROWs are definite and concrete. Qwest attempts represents that a "quitclaim" is intended to transfer to a CLEC only all of the interest Qwest has in the subject ROW and that, therefore, it is nondiscriminatory per se. As demonstrated above, a quitclaim conveyance does not convey the actual ROW property or even actual access to the ROW property, but conveys only an ephemeral right. Accordingly, Qwest's quitclaim proposal is discriminatory.

Fortunately, however, it is not necessary to resolve the difficult meaning of a quitclaim conveyance of access to a right of way in this setting. If Qwest's primary intent is to disclaim certain warranties (and not a more cynical attempt to gin up some nominal compliance with the Checklist Item No. 3), Respondents' proposes to avoid the difficulties of construction and interpretation of a "quitclaim," and instead just allow Qwest to disclaim warranties, as it does presently in it's draft "Quitclaim Right of Access

Agreement" at paragraph 4.b. Respondents' proposals provide for this disclaimer. In addition, Respondents' proposals include certain reasonable promises from Qwest that during a CLECs access Qwest will not do or fail to do something that would impair a CLECs access as required by the Act. The promises make clear certain reasonable commitments that at best are unclear under Qwest's proposals, and are the appropriate counterpart to CLEC promises not to impair Qwest's interests under the ROW.

C. QWEST IMPERMISSIBLY EXCLUDES RIGHTS OF WAY OVER PUBLIC PROPERTY.

Qwest's recent revisions to its SGAT language proposes to limit the definition of Right of Way to "expressly exclude[] any public, governmental, federal or Native American, or other quasi-public or non-private lands . . . ." SGAT § 10.8.1.3.1. Qwest reasons only that it this change was warranted by the "axiom that no private party has the right to convey public land" but provides no basis in the law for their change. Qwest's Position Regarding Access to Poles, Ducts, Conduits and Rights of Way, at 8. Qwest does not explain why this "axiom" was not clear when it filed the first draft of the SGAT in this proceeding that did not include the this revised definition. Further, Qwest apparently does not understand the "axiom" that providing access to a ROW does not convey "public land" but rather an provides access to or under a right granted by an appropriate authority to use public land, such as an easement to law cable over Forest Service land. Further, applicable law makes no distinction between rights of way granted over public or private rights of way. See e.g., Act § 251(b)(4). Qwest's proposed change is meritless, and amounts to a further diminution of a CLECs access to ROWs as mandated by the Act.

III. CONCLUSION

For the foregoing reasons, the Respondents recommend that the Commission reject Qwest's latest ROW proposals as described herein.

Respectfully submitted on this 28th day of July 2000.

The attorneys for AT&T are authorized to sign on behalf of WCom, Inc.

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Attachment 1

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.[1]

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Qwest.[2]

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.[3]

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.[4]

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.[5]

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via a Right of Access Agreement in the form of Attachment 4 to Exhibit D ("Access Agreement"), access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in real property, sufficient to permit Qwest to place telecommunications facilities on such real property; the owner of such property may permit Qwest to install and

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4 CO Workshop August 1-3 (proposed) WA Workshop November 6-10, 2000 (proposed)
5 CO Workshop August 1-3 (proposed) WA Workshop November 6-10, 2000 (proposed)

maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.[6]

10.8.1.4 CLEC Duties –CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to Qwest on rates, terms, and conditions that are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for Qwest to provide service all as may be set forth in 47 U.S.C. Section 251 (b)(4), applicable F.C.C. regulations and applicable Colorado rules,.[7]

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real property or to use real property.[8]

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Innerduct Occupancy General Information Document, attached hereto as Exhibit D.[9] Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of

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extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.[10]

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.[11]

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4.[12] CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

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10.8.2.10 If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to Qwest. Upon request, Qwest shall permit CLEC to install Poles/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from

the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required.[13] CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.[14]

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Innerduct.[15]

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct,

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conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest its Affiliates or any other Telecommunications Carrier is held.[16] Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. [17] CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC.[18] CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to

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remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern,[19]

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.25 Because of Qwest's status as an incumbent LEC, and the potential confusion of third party landowners with respect to their rights, Qwest shall disclose to all third party landowners that own property subject to a ROW that it is neither illegal nor a violation of the right of way agreement with Qwest for such third party to enter into a right of way agreement, including an Access Agreement, with any telecomunications carrier, as defined in 42 U.S.C. § 224, including CLEC. Qwest shall make such disclosure to (i) any third party landowner Qwest with whom Qwest enters into a ROW agreement from and after the Effective Date and (ii) any third party landowner whose property is described in the ROW Matrix upon request by CLEC.

10.8.3 Rate Elements

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor, the nature of the ROW (e.g. easement, lease, etc.), the name and address of the present landowner, if known to Qwest, what ROW documents Qwest has under its control and whether such documents

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include express prohibitions on disclosure of the ROW document. Separate Inquiry Fees apply for ROW, Poles and Conduit/Innerduct.[20]

10.8.3.2 Field Verification Fee/Access Agreement Preparation Fee. In the case of Poles and Innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for Poles and Manholes. In the case of ROW, the Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Access Agreement for each ROW requested by the CLEC. Field Verification and Access Agreement Preparation Fees shall be billed in advance.[21]

10.8.3.3 Make-Ready Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for access. For innerduct , this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time.. The estimated pre-paid fee shall be billed in advance.[22]

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.[23]

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.[24]

10.8.3.6 Access Agreement Consideration. A pre-paid fee which constitutes consideration for conveying or providing access to the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee..[25]

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10.8.4 Ordering

There are two (2) steps required before placing an Order for access to Innerduct and Pole Attachment: Inquiry Review and Field Verification. There is only one step required before obtaining access to ROW: Inquiry Review.[26]

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Innerduct Occupancy, Qwest will provide CLEC with Exhibit D.[27] CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Innerduct and ROW. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.[28]

10.8.4.1.1 Inquiry Review – Duct/Conduit.[29] Qwest will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon receipt of an inquiry by CLEC, provide (i) the ROW Matrix to CLEC within ten (10) days of the request. Qwest makes no warranties concerning the accuracy of the information provided to CLEC (CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner of the fee estate may not be the party identified in the document provided by Qwest) and (ii) copies of all ROW documents that are identified in the ROW Matrix and either have been publicly recorded or do not require the consent of a landowner for disclosure. .[31]

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29 CO Workshop June 29-30, 2000 (consensus) WA Workshop July 6, 2000 (consensus)
30 CO Workshop June 29-30, 2000 (proposed) WA Workshop June 21-23, 2000 (proposed)
31 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

10.8.4.2 Field Verification – Poles Ducts and Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus $10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable, depending on whether the request is for Poles, Innerduct or ROW: (a) in the case of Poles or Duct, a field survey and site investigation of the Poles or Duct, including the preparation of distances and drawings, to determine availability of existing Poles/Innerduct; identification of Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey or provide access to the interest identified in the Access Agreement. In the case of Poles or Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days. [32]

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.[33]

10.8.4.3 Order – Poles and Ducts. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready.[34]

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual

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32 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

33 CO Workshop August 1-3, 2000 (proposed) WA Workshop July 6, 2000 (proposed)

34 CO Workshop June 29-30, 2000 (consensus) WA Workshop June 21-23, 2000 (consensus)

Make-Ready costs.[35]

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.[36]

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after notification of the completion of the Make-Ready work. [37]

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after notification of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.[38]

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.[39]

10.8.5 Billing

CLEC agrees to pay the following fees in advance as specified in Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupany Fee) will be assessed on an annual basis

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35 CO Workshop June 29-30, 2000 (proposed) WA Workshop July 6, 2000 (proposed)(Nextlink to verify)

36 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

37 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

38 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

39 CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

(unless CLEC requests a semi-annual basis). Annual usage fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices . All fees are not refundable except as expressly provided herein.[40]

10.8.6 Maintenance and Repair

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

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[40] CO Workshop August 1-3 (proposed) WA Workshop November 6-10 (proposed)

ATTACHMENT 2

EXHIBIT D

Date General Information Provided by Qwest:_____
General Agreement Number :_____
BAN Number(must be assigned before processing):_____

REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 7/17/00

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain CLEC's facilities ("Facilities") to Qwest Corporation's ("Qwest") Poles, to place Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to Qwest's private right of way ("ROW"), to the extent Qwest as the right to grant such access. This General Information is necessary to determine if Qwest can meet the needs of the CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.

2. **PROCESS**. The Qwest process is designed to provide the CLEC the information so as to assist CLEC and Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

   2.1 Inquiry Review - Attachment 1.A (Database Search). The CLEC is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the CLEC's Request. Please be sure a BAN number is assigned by the Product Manager (call 303-896-0789) before sending Attachment 1.A.

   As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route should be sent to the Product Manager while the fee should be sent to the Qwest CLEC Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. Qwest reserves the right to reject illegible or incomplete maps. If CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps.

   Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation (Attachment 1.B) to the CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Qwest will assign a Field Engineer and provide his/her name and phone number to the CLEC. The Field engineer will check the local database and be available for a joint verification with the CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix, within ten (10) days, which will identify (a) the owner of the ROW as reflected in Qwest's records, (b) the nature of each ROW (i.e., easement, license, etc.) (c) the name and address of the present landowner, if known to Qwest, (d) the ROW documents Qwest has under its control and (e) whether such documents include express prohibitions on disclosure of the ROW document. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property. At the same time Qwest delivers the ROW Matrix, Qwest will deliver copies of all ROW documents that are identified in the ROW Matrix and that (i) have been publicly recorded, or (ii) are under Qwest's control and do not require the consent of a landowner for disclosure. Qwest may redact all monetary provisions from any ROW document under its control before disclosure to CLEC.

If Qwest has identified any ROW documents that have not been publicly recorded and require consent of a third party to disclosure, Qwest shall cooperate promptly and in good faith with CLEC to obtain the consent of such third party to such disclosure.

If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the CLEC, Qwest will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the CLEC, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. CLEC copy of the signed Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the CLEC by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the CLEC an executed and acknowledged Right of Access Agreement to the CLEC in the form attached hereto as Attachment 4 (the "Access Agreement").
Verification/Access Agreement Preparation work shall be completed within the time frames designated in the table below:

SIZE OF VERIFICATION REQUEST	TIME LIMIT (DAYS)
Less than or equal to 100 poles or 30 manholes or 2 miles of linear ROW	35
Less than or equal to 200 poles or 60 manholes or 4 miles of linear ROW	50
Less than or equal to 300 poles or 90 manholes or 6 miles of linear ROW	65
Less than or equal to 400 poles or 120 manholes or 8 miles of linear ROW	80
Less than or equal to 500 poles or 150 manholes or 10 miles of linear ROW	95
Greater than 500 poles or 150 manholes or 10 miles of linear ROW	As Negotiated Between U S WEST and CLEC

If a ROW document contains a provision that expressly requires the consent of a property owner to a conveyance or transfer of access to the ROW, , after Qwest has delivered the Access Agreement, the CLEC will be required to obtain the property owner's signature on the Consent that is a part of the Access Agreement. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the CLEC is responsible for determining the current owner of the property and obtaining the proper signature and, if required for recording as described below, acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the CLEC to obtain a copy of the Easement Agreement.

After the CLEC has either obtained the properly executed and, if required, acknowledged Consent or, if no ROW document expressly requires such consent, executed the Access Agreement: (a) if the ROW was created by a publicly recorded document, the CLEC must record the Access Agreement (with the Consent, if required) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded and if a ROW document expressly requires such consent, CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, . As between Qwest and CLEC, the Access Agreement shall be effective upon execution by the parties.

2.3 Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Qwest will provide the CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the CLEC and applicable payment for the Make-Ready Fees identified, Qwest will assign the CLEC's requested space; Qwest will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Qwest will notify CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". Qwest will repair or clear damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The CLEC may contract separately with a Qwest-approved contractor to complete the construction provided a Qwest inspector inspects the work during and after construction. Construction attaching to or entering Qwest-owned structure must conform to Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Qwest agrees to issue to CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the CLEC.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Qwest in determining if Poles/Innerduct space is available to meet the CLEC's request; however, the CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Qwest denies access, Qwest shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Access Agreement. In the event that complications arise with respect to preparing the Access Agreement or any other aspect of Access Agreementing access to Qwest's ROW, the CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

3. DISPUTE RESOLUTION

3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A

General Agreement No._____
BAN Number (must be assigned before processing):_____

Poles/Innerduct/ROW Inquiry Preparation Fee

Date Submitted:_____ Date Replied to CLEC: _____

CLEC Name: _____

Contact name:_____
Address: _____
Phone Number:_____
e-mail address:_____
State or location of inquiry:_____

Poles/Innerduct Permit Database Search Costs Quotation
(One Mile Minimum)

	Costs	Est. Miles	Total
1. Pole Inquiry Fee	see attached pricing chart	_____	$_____
2. Innerduct Inquiry Fee	see attached pricing chart	_____	$_____
3. ROW Records Inquiry	see attached pricing chart	_____	$_____

4. Estimated Interval for Completion of Items 1, 2 and/or 3: 10 Days

5. Additional requirements of CLEC: _____

This Inquiry will result in (a) in the case of Poles and Innerduct, a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary Access Agreements. In the case of Poles, the name and telephone number of the Field Engineer will be provided so that the CLEC may contact the Qwest Field engineer and discuss attachment plans. If a field verification of the poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such Poles/Innerduct.

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount ($114 per mile or $171 per mile) to:

Pam Fisher, Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112
303-792-6990

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:

John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202 303-896-0789

ATTACHMENT 1.B

General Agreement No._____
BAN Number:_____

Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation

Date Nonrefundable Received: Date Replied to CLEC: _____

NOTE: THIS ATTACHMENT WILL BE COMPLETED BY QWEST AND SENT TO THE CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.

	Estimated Costs	Number	Total Charge
1. Pole Field Verification Fee (10 pole minimum) $_____	see attached pricing chart		_____
2. Innerduct Field Verification Fee $_____	see attached pricing chart		_____
3. Access Agreement Preparation and Consideration $_____	$___ per Access Agreement		_____

4. Estimated Interval for Completion of Items 1, 2 and/or 3: _____ Working Days

5. Additional requirements of CLEC: _____

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its field survey/preparation of Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such ROW/Poles/Innerduct. The CLEC acknowledges the above costs are estimates only and CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		Qwest Corporation

Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

A copy of this form signed form should be sent to:

John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202

The original signed form should be sent with a check for the verification amount to:

Pam Fisher, Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

1. SCHEDULE A—PRICING CHART

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

Inquiry and Verification, Poles and Ducts

STATE	POLE/ROW INQUIRY per mile***	DUCT INQUIRY per mile***	POLE VERIFICATION per pole***	DUCT VERIFICATION per manhole***
AZ	$_____	$_____	$_____	$_____
CO	$_____	$_____	$_____	$_____
ID	$_____	$_____	$_____	$_____
IA	$_____	$_____	$_____	$_____
MN	$_____	$_____	$_____	$_____
MT	$_____	$_____	$_____	$_____
NE	$_____	$_____	$_____	$_____
NM	$_____	$_____	$_____	$_____
ND	$_____	$_____	$_____	$_____
OR*	$_____	$_____	$_____	$_____
SD	$_____	$_____	$_____	$_____
UT	$_____	$_____	$_____	$_____
WA*	$_____	$_____	$_____	$_____
WY	$_____	$_____	$_____	$_____

***** Qwest is currently recalculating costs for all states. Figures for all states will be provided when they are available.**

* ordered rates by the state commission.

Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be $200.00 per pole or innerduct segment between manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3.

ATTACHMENT 2

Poles/Innerduct Order General Agreement No_____
BAN Number:_____

NOTE: THIS FORM WILL BE COMPLETED BY QWEST AND SENT TO CLEC FOR SIGNATURE

Make-ready Work required: Yes ( ) No ( ) Date Received:_____

If Yes is checked, estimated Make-ready costs: $ _____
Note: Make-Ready charges do not include construction work to enhance infrastructure

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - _____.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, CLEC must:
   a. provide Qwest representative, a final design showing splice, racking and slack locations in Qwest utility holes.
   b. tag all equipment located in/on Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. Pole Attachment, Per Pole	$ _____/	_____	$_____
2. Innerduct Occupancy, Per Foot	$ _____	_____	$_____
Total Annual Recurring Charges			$_____

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you choose not to place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO_____ (/DAY * DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the CLEC desires Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which Qwest offers such Poles/Innerduct. By signing this document you are agreeing to the access described herein.

Return this signed form and check to: Pam Fisher, **Qwest CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112**

Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

Qwest Field Engineer: _____

Phone Number: _____

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

ATTACHMENT 3

General Agreement No._____

QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ ("CLEC") and Qwest Corporation ("Qwest"), for one or more Orders for the CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to Qwest's Poles and/or placement of Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.,* an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

1.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Qwest, and/or (b) access to Qwest's ROW subject to the terms and conditions of such ROW. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.

1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by CLEC or to obtain any ROW for CLEC's use.

1.3 Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. TERM. Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

3.1 CLECTo the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may

have been accruing at the time of termination, including indemnity, warranties, and confidential information.

3.3 If Qwest terminates this Agreement for Cause, or if CLEC terminates this Agreement without Cause, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Qwest to remove its Facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

3.4 If this Agreement or any Order is terminated for reasons other than Cause, then CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed.

3.5 Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the CLEC. Upon abandonment of Poles/Innerduct, and with the concurrence of the other CLEC(s), if necessary, CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. CHARGES AND BILLING.

4.1. CLEC agrees to pay Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. Qwest has the right to revise Fees, at its sole discretion, upon written notice to CLEC within at least sixty (60) days prior to the end of any annual billing period.

5. INSURANCE. The CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars ($100,000.00) for each accident.

5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily

injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4 Qwest may require the CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Qwest shall be borne by CLEC, and the CLEC shall arrange to have such costs billed separately and directly to Qwest by the insuring carrier(s). Qwest shall be authorized by the CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a hole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Qwest. The CLEC shall forward to Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to Qwest; (3) certification that underground hazard overage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The CLEC shall not commence work hereunder until the obligations of the CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the CLEC of any liability hereunder or in any way modify the CLEC's obligations to indemnify Qwest.

5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars ($6,000,000.00). In addition, said policy shall name Qwest and the CLEC/SubCLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

6.1 Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Qwest spare conduit include the placement of innerduct, Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before CLEC's Facilities can be accommodated,

the cost of such modification will be included in the CLEC's nonrecurring charges for the associated Poles/Innerduct Order.

6.2 CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Qwest does not warrant or represent that providing CLEC with access to the Poles/Innerduct in any way constitutes such legal right. The CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the CLEC's sole expense, in order to perform its obligations under this Agreement. The CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The CLEC shall comply with all conditions of rights-of-way and Orders.

6.3 CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to Qwest upon written request. CLEC shall within thirty (30) days comply and provide the requested information to Qwest to bring their facilities into compliance with these terms and conditions.

6.4. In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.

6.5 In the event of an infrastructure outage, the CLEC should contact their Network Maintenance Center at 1-800-223-7881 or the CLEC may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

7.1. If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the CLEC and Qwest determines in its sole discretion to provide the requested capacity, the CLEC shall pay Qwest the total replacement cost, Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Qwest. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and CLEC shall be responsible for its pro rata share of the modification cost. Except as set forth herein, CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of Qwest shall be provided to CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not rearrange its facilitates within sixty (60) days after receipt of written notice from Qwest requesting such rearrangement, Qwest may perform or cause to have performed such rearrangement and CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. INSPECTION OF FACILITIES. Qwest reserves the right to make final construction, subsequent and periodic inspections of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. CLEC shall provide written notice to Qwest, at least fifteen (15) days in advance, of the locations where CLEC's plant is to be constructed.

8.2. The CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Qwest within five (5) business days of the date(s) of the occupancy.

8.3. Qwest shall provide written notification to CLEC within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by Qwest has been completed, CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct system, unless Qwest has provided CLEC a written extension to comply. CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, Qwest shall perform such corrections and CLEC shall pay Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken my be made by Qwest.

8.5. Once the CLECs facilities occupy Qwest Poles/Innerduct system and Exhibit A has been received by Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that CLEC has failed to comply with the provisions set forth in this Agreement, in which case the CLEC shall reimburse Qwest for full costs of inspection, and re-inspection to determine compliance as required. A CLEC representative may accompany Qwest on field inspections scheduled specifically for the purpose of inspecting CLEC's Facilities; however, CLEC's costs associated with its participation in such inspections shall be borne by CLEC. Qwest shall have no obligation to notify CLEC, and CLEC shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the CLEC within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Qwest, and shall not relieve CLEC of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITITES

9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USW, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars ($200.00) per attachment per Pole or innerduct run between manholes, and require the CLEC to submit in writing, within ten (10) day after receipt of written notification from USW of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USW within the specified time period, the CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USW may remove the CLEC's facilities without liability, and the cost of such removal shall be borne by the CLEC.

9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not CLEC is ordered to continue the occupancy of the Poles/Innerduct system.

9.3. No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Qwest of any of its rights of privileges under this Agreement or otherwise.

10. **REMOVAL OF FACILITIES**. Should Qwest, under the provisions of this Agreement, remove CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Qwest will deliver the Facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If payment is not received by Qwest within thirty (30) days, CLEC will be deemed to have abandoned such facilities, and Qwest may dispose of said facilities as it determines to be appropriate. If Qwest must dispose of said facilities, such action will not relieve CLEC of any other financial responsibility associated with such removal as provided herein. If CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Qwest for previous occupancy have been paid in full. CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by CLEC," each as attached hereto, advising Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

11. **INDEMNIFICATION AND LIMITATION OF LIABILITIES.** CLEC shall indemnify and hold harmless Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the CLEC; (2) actual or alleged fault or negligence of the CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by CLEC under this Contract or any product liability claims relating to any material supplied by CLEC under this Contract; (4) failure of CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the CLEC. If both Qwest and the CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the CLEC, if Qwest desires. Qwest shall give the CLEC reasonable written notice of all such claims and any suits alleging such claims and shall

furnish upon the CLEC's request and at the CLEC's expense all information and assistance available to the Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CLEC, AND THE CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF QWEST WHEN CONCURRENT WITH THAT OF THE CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. FORCE MAJEURE

12.1 The CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Qwest after the contingency occurs. With respect to Qwest's election of Section 12.2.3 above:

12.3.1 Qwest shall give the CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 Qwest shall be excused from its performance if prevented by acts or events beyond the Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The CLEC acknowledges that Qwest will rely on

the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which CLEC shall remain fully liable.

15. **SEVERABILITY**. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16. **GENERAL PROVISIONS**.

16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

16.2 This Agreement shall not be assignable by CLEC without the express written consent of Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by CLEC to CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that CLEC must obtain Qwest's consent in any event.

16.3 This Agreement benefits CLEC and Qwest. There are no third party beneficiaries.

16.4 This Agreement constitutes the entire understanding between CLEC and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

CLEC	Qwest Corporation
_____	_____
Signature	Signature
_____	JOHN CARVETH
Name Typed or Printed	Name Typed or Printed
_____	PRODUCT MANAGER
Title	Title
_____	_____
Date	Date

Address for Notices	Address for Notices
	Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202
Contact: Phone: FAX:	Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022

EXHIBIT A

PULLING IN REPORT

_____20____

Qwest Corporation

_____

_____

This is to advise you that pursuant to General Agreement No. _____ granted to us under the terms of the Innerduct Agreement dated _____, 20__ we have completed installation of the following cable into the following ducts.

Municipality

Location

From Manhole at	To Manhole at	Cable and Equipment Installed	Date

_____
Name of CLEC

By:_____
Title:_____

Receipt of the above report is hereby acknowledged_____, 20__.

Qwest Corporation

By:_____
Title:_____

1. Reports shall be submitted in duplicate.

2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ___, unless a change has been previously authorized in writing by Licensor.

EXHIBIT B

CLEC:_____

NOTIFICATION OF SURRENDER OR MODIFICATION
OF CONDUIT OCCUPANCY ORDER BY CLEC

Street Address _____
City and State_____
Date_____

Qwest Corporation

In accordance with the terms and conditions of this Agreement between us, dated _____, 20__, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated _____, 20__) effective _____ _____.

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED

_____
Name of Licensor

_____
Name of Co- Provider

_____
Date Notification Received

By_____

_____
Date Modification Accepted

Title_____

By _____

Discontinued:

Total duct footage_____

_____
CLEC

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY CLEC

Street Address_____
City and State_____
Date_____

Qwest Corporation
In accordance with the terms and conditions of the Agreement between Qwest and CLEC, dated _____ _____,
20__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in CLEC's prior notification to Qwest,
dated _____, 20__) effective _____.

	POLE NO.	ASSOC.POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC.RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			
10.		A A/GS -			
11.		A A/GS -			
12.		A A/GS -			
13.		A A/GS -			

Date Notification Received _____
Date Modification Received_____
By:_____

_____
Name of CLEC

)iscontinued:

By:_____

Poles_____
Anchors_____
Anchor/Guy Strands_____

Its:_____

ATTACHMENT 4
FORM OF ACCESS AGREEMENT

After recording, please return to:

Qwest Corporation
1801 California Street
Suite 2330
Denver, Colorado 80202

Attention: Structure Project Manager

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address is _____, and _____, a _____, whose address is _____ ("Grantee").

RECITALS

A. This Agreement relates to certain real property (the "Property") located in the County of _____ (the "County"), State of _____ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner"), if such consent is pressly required under the Right of Way Agrement, and on the other terms and conditions set forth in this Agreement, Grantor has agreed to convey to Grantee, disclaiming the representations or warranties described in this Agreement, the right to use the Easement Rights, and Grantee has agreed to accept such conveyance.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby conveys to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights conveyed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Consent by Owner. If expressly required under a provision of the Right of Way Agreement, Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default. Grantor shall cooperate with Grantee promptly and in good faith in Grantee's efforts to obtain such consent, if such consent is necessary.

b. Recordation of Agreement. If the Right of Way Agreement has been publicly recorded in the real property records of the countty in which the Property is located, Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent shall be attached to the Agreement.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating

to Grantor's execution and delivery of this Agreement, as provided in the [SGAT and ROW General terms and conditions].

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation cane be observed or performed by Grantor.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Grantor's Covenants.

a. Compliance with Right of Way Agreement. Grantor agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantor fails to observe or perform any of its obligations under the Right of Way Agreement, Greantee shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation cane be observed or performed by Grantee.

b. Compliance with Laws. Grantor agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. Non-Interference. Grantor agrees that it will not interfere with Grantee's or Grantee's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

7. Indemnification. Grantee and Grantor (each an "Indemnifying Party")hereby agrees to indemnify, defend and hold the other and their respective Affiliates ("Indemnified Party") harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of the Indemnifying Party or the Indemnifying Party's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Indemnified Party or their respective Authorized users, the termination or revocation of the Easement Rights, Indemnifying Party shall be liable to Indemnified Party for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Indemnifying Party shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Indemnified Party or their respective Authorized Users.

8. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor. Nothing in this Agreement shall prevent Grantee from prosecuting or defending any action to recover any amounts due to

Grantee as a consequence of the termination or extingushment of its rights hereunder as a result of such condemnation.

9. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all. If Grantor prevails in action before a court of competent jurisdiction in any enforcement action hereunder, Grantee agrees to pay the reasonable costs of such enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit. In case it becomes necessary for either Grantor or Grantee to enforce or perform the obligations of the other hereunder or under the Right of Way Agreement, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings, the other party agrees to pay the reasonable costs of such enforcement of the obligations of such party, including reasonable attorneys' fees and all costs of suit

11. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

12. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

13. Grantor's Waiver of Confidentiality. Subject to Owner's execution of the Consent, if required, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. If the consent of Owner is required, Grantor's waiver is expressly conditioned on Owner's consent to disclosure of the Right of Way Agreement, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the

Consent does not have the legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

14. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

15. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

16. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

17. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by: _____

QWEST CORPORATION, a Colorado corporation, successor in interest to U S WEST COMMUNICATIONS, INC., a Colorado corporation

By:_____
Name:_____

_____

Title:_____

[Form of acknowledgement to be used if necessary]

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of QWEST CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____ _____, a _____

By:_____
Name:
Title:

[Form of Acknowledgment to be used if necessary]

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

CONSENT TO ACCESS AGREEMENT

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the foregoing Access Agreement (the "Agreement"). This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee. 4. Owner's Waiver of Confidentiality. If the Right of Way Agreement contains and express provision requiring consent to disclosure of the and Owner has not previously given such consent, Owner hereby consents to the disclosure of the Agreement**Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

6. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____

a _____

By:_____
Name:_____
Title:_____

[Form of Acknowledgement to be used if necessary]

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public

My Commission Expires:

_____

EXHIBIT 1

Right of Way Agreement

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

QWEST'S POSITION REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AND PRIVATE RIGHTS-OF-WAY AGREEMENTS AND QWEST'S REDACTION PRINCIPLES

INTRODUCTION

Qwest Corporation, formerly U S WEST Communications, Inc., ("Qwest") hereby submits this brief regarding the claim of AT&T Communications of the Mountain States, Inc. ("AT&T") that Qwest must provide CLECs with copies of its agreements with private landowners for access to the private landowners' rights-of-way. With this brief, Qwest also submits a proposed revised version of Section 10.8 of the Colorado Statement of Generally Available Terms ("SGAT"), its proposed redactions of AT&T Exhibits 58 and 59, and Qwest's proposed redaction principles.

As explained herein and in Qwest's prior comments on AT&T's demand for access to Qwest's agreements with other landowners, AT&T's demand has nothing to do with Qwest's compliance with 47 U.S.C. § 271(c)(2)(B)(iii), checklist item 3, relating to access to poles, ducts, conduits, and rights-of-way. Qwest's Colorado SGAT provides that upon the request of a competitive local exchange carriers ("CLEC"), Qwest will grant access to poles, ducts and conduits over which Qwest has ownership or control.

Further, Qwest will agree to and implement a process whereby Qwest will quitclaim a right of access to its privately-owned rights-of-way, without warranty, to the extent that Qwest

has the right to grant such access (if any). Qwest will also obligate itself to provide (a) complete copies of its easements and other right-of-way conveyance documents to requesting carriers if such easements are publicly recorded, or (b) redacted copies of non-publicly recorded right-of-way conveyance documents in Qwest's possession identified by the CLEC, if the landowner consents to a waiver of the confidentiality of such agreement.

These processes should satisfy any legitimate concerns of AT&T. In the first place, Qwest will agree to quitclaim access to its right of way for CLECs' use to the full extent that Qwest has the legal power to do so. Secondly, Qwest will provide copies of the right-of-way agreements, subject only to the consent of the landowner in a form that gives Qwest protection against misuse of the documents and the rights conveyed, if any.

While AT&T's interest is to obtain copies of multiple dwelling unit agreements, Qwest cannot legally provide such copies, as those agreements are protected by confidentiality provisions or the expectation of privacy. Thus, Qwest's consent to disclosure, which it will provide, is only half the picture. To complete the waiver of confidentiality with respect to a two-party agreement, the CLEC must also obtain the consent of the landowner, which has co-equal rights of confidentiality and the expectation of privacy of its agreements. If the CLEC obtains such consent, Qwest will agree to waive its right to keep the document confidential, except with respect to the dollar figures in the agreements, which are proprietary and competitively sensitive (and to which AT&T can make no legitimate claim of need).

In short, Qwest commits to do everything requested that it legally can do to satisfy AT&T's legitimate requests under the law, subjection only to reasonable restrictions to ensure that Qwest will not create risk or liability for itself and will not be obligated to undertake the

legwork of obtaining publicly available information and/or consent of landowners to waive confidentiality provisions. Neither the Act nor the FCC Orders impose any such obligations.

AT&T has no legitimate justification for demanding anything else. Access to MDU agreements beyond the scope of what Qwest is prepared to offer simply is not encompassed within Sections 251(b)(3) or 224 of the Act. Indeed, whether an MDU creates a real property interest in the first place, let alone whether a LEC such as Qwest has the right to convey access thereto, is an issue with which the FCC is currently struggling in an ongoing proceeding.[1] Nevertheless, Qwest will agree to provide both redacted copies of such agreements, *and* will quitclaim the right to use such real property rights to the fullest extent possible, on the condition that the CLECs obtain the consent of the landowner to place the MDU in the public domain and agree to other reasonable protections of Qwest's real property rights. This Commission should not step unnecessarily into this highly contentious area in the context of consideration of checklist item 3 to require Qwest to do anything further on behalf of its competitors. Indeed, the FCC recently emphasized in its *SBC Texas Order*[2] that Section 271 proceedings are not the forum in which to address "new and unresolved interpretive disputes," such as this one.

Importantly, Qwest agrees with the Office of Consumer Counsel ("OCC") that property owners—but not Qwest or CLECs—should have the right to determine whether private

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[1] Notice of Proposed Rulemaking, *In the Matter of Promotion of Competitive Networks ion Local Telecommunications Networks et al*, WT Docket No. 99-217, 14 FCC Rcd 12673, FCC 99-141, ¶¶ 52-62 (rel. July 7, 1999). As Qwest noted in its Position Regarding Access To Private Rights-Of-Way Agreements, the FCC is struggling with many issues, including whether it has authority to compel private property owners to provide access to multiple carriers, whether requiring access would constitute a taking, and whether it should even preclude exclusive arrangements between property owners and telecommunications carriers.

[2] Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 ¶ 23 (June 30, 2000).

agreements should be made public. Indeed, the process that Qwest is prepared to undertake follows all of the recommendations of the OCC, which are intended to protect private citizens from being caught in the crossfire of telecommunications competition.

In sum, Qwest is prepared to do everything in its legal power to accommodate AT&T's requests, subject only to certain minimal and reasonable conditions intended to protect private citizens and Qwest from risk and forfeiture of legal rights. These commitments fully satisfy, if not exceed, the limited purview of checklist item 3. To give effect to these commitments, Qwest has proposed revisions to Section 10.8 and Exhibit D of the SGAT that satisfy fully its duty to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way and, as requested at the follow up workshop, that define key terms.

Qwest's position is simple, clean and complete. There can be no question that the proposed quitclaim practice satisfies its checklist item 3 obligations. The Commission should accept Qwest's revisions and position and reject AT&T's request for further access not required or contemplated by the Act.

ARGUMENT

A. Qwest Has Developed A Quitclaim Right of Access Agreement To Facilitate Granting CLECs Access To Rights-Of-Way.

Under 47 U.S.C. §§ 251(b)(5) and 224, all local exchange carriers, not just incumbent LECs, are required to provide all telecommunications carriers nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by the local exchange carrier. In the *Local Competition Order*, the FCC determined that the scope of a utility's ownership or control of an "easement or right-of-way is a matter of state law."[3] Because the scope of ownership or

[3] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 ¶ 1179 (1996).

control varies state-to-state, the FCC refused to "structure general access requirements where the resolution of conflicting claims as to a utility's control or ownership depends on variables" intrinsic to state law.[4] Instead, the FCC reiterated that "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access."[5] Where a local exchange carrier, including an incumbent LEC, has neither ownership nor control over the right-of-way, the FCC is equally clear that the carrier has no obligation to obtain access on behalf of the requesting carrier.[6] In its Order on Reconsideration, the FCC stated:

> Based on the record before us, we agree with those commenters that argue that the right to exercise eminent domain is generally a matter of state law, exercised according to the varying limitations imposed by particular states. We are persuaded that neither the statute nor its legislative history offers convincing evidence that Congress intended for section 224 to compel a utility to exercise eminent domain. Accordingly, on reconsideration, we find that *section 224 does not create a federal requirement that a utility be forced to exercise eminent domain on behalf of third party attachers.*[7]

To meet its obligation to provide access to rights-of-way where it has ownership or control to do so, Qwest has developed a Quitclaim Right of Access Agreement, Attachment 4 to Exhibit D of the SGAT (the "Quitclaim Agreement"). Pursuant to the Quitclaim Agreement, which will be provided to any requesting telecommunications carrier, Qwest will quitclaim a non-exclusive right to use the applicable right-of-way, to the extent that Qwest has any such rights to convey.

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[4] *Id.*

[5] *Id.*

[6] Order on Reconsideration, *Implementation of the Local Competition Provisions of the Telecommunications Act*, CC Docket No. 96-98, FCC 99-266, 14 FCC Rcd 18049 ¶ 38 (rel. Oct. 26, 1999)

[7] *Id.* (emphasis added).

A quitclaim deed, by definition, conveys the identified interest without any warranties that the granting party has either the interest purported to be conveyed, or the authority to convey the interest if it does exist. In layman's terms, if the quitclaiming party has something to convey, it conveys; if not, nothing happens, and the quitclaim is simply ineffective. Thus, the Quitclaim Agreement will operate to satisfy the precise requirements of the Act: if Qwest has the ability to provide access to rights-of-way, the Quitclaim Agreement will operate to convey such access; if not, Qwest has nevertheless taken every action within its power to grant telecommunications carriers access to its rights-of-way. This instrument, then, solves the problem of how Qwest may share a legal right that either may not exist or that Qwest may not have the right to share.

The act of conveying subordinate legal rights to real property, however, creates risk for the granting party. The largest single risk to Qwest in quitclaiming the right to use an easement is that the grantee (such as AT&T) will misuse the easement. In some circumstances, this could operate to extinguish or terminate the underlying right, i.e., Qwest's right-of-way. For example, if AT&T defaults under its subordinate right to use Qwest's easement, this may trigger a default under Qwest's easement. Qwest's obligation to provide access to rights-of-way does not include the obligation to put Qwest's own rights-of-way at risk. Therefore, Qwest has built safeguards into the Quitclaim Agreement to (a) minimize the risk that Qwest's rights-of-way will be jeopardized, and (b) ensure that Qwest will be made whole in the event that its competitor causes Qwest to forfeit its valuable property right. Specifically, to minimize the risk of jeopardizing Qwest's right-of-way, Qwest requires the carrier to obtain the property owner's agreement to give Qwest the right to cure its competitor's default that could jeopardize Qwest's right-of-way. To ensure that Qwest will be made whole in the event of loss of right-of-way, a defaulting CLEC must reimburse Qwest for all costs incurred in the event of such an occurrence. The Quitclaim

Agreement also contains other terms and conditions that reasonably protect Qwest from damages or forfeiture of its rights.

As an alternative, if the CLEC would prefer to seek access to a property owners' right-of-way on its own, Qwest's process is designed to allow requesting carriers the right to opt out of the process entirely, and to simply obtain its own right-of-way directly from the property owner, if the requesting carrier so desires. However, in the event that a CLEC wishes to attempt to make use of Qwest's rights-of-way, rather than simply obtaining its own, the CLEC must undertake the due diligence and other efforts required to obtain the consent of the landowner, and may not rely on Qwest to do that work for the CLEC.[8]

This more than satisfies Qwest's obligation to provide nondiscriminatory access to rights-of-way. Qwest has agreed to convey access to the full extent it has authority to do so. AT&T or any another CLEC must choose whether to accept Qwest's offer or obtain rights-of-way on its own.

B. Qwest Has Revised Section 10.8 of the SGAT For Consistency And To Define Terms, As Requested.

As requested at the follow up workshop, Qwest has proposed revisions to Section 10.8 to clarify some of the terms contained therein and for internal consistency. For example, Qwest has defined the terms "pole attachment" (SGAT § 10.8.1.1.1), "conduit" (SGAT § 10.8.1.2.1), and "duct" (SGAT § 10.8.1.2.2) relying upon definitions in FCC rules.[9] Because FCC rules do not define "rights-of-way" or "innerduct," Qwest has proposed definitions for those terms. The term "rights-of-way" in Section 10.8.1.3.1 is based upon Colorado common law and upon the simple axiom that no private party has the right to convey public land—hence, the exclusion of public

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[8] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696 ¶ 213 (rel. Nov. 5, 1999).

right-of-way granted under a permit from the definition of "rights-of-way." The definition of "innerduct" in Section 10.8.1.2.3 is based upon common industry usage.

Qwest has also proposed its definition of the phrase "ownership or control" in Section 10.8.1.4 based upon property law concepts as well as the FCC's pronouncements in the Order on Reconsideration.[10] However, because Qwest will quitclaim its interest in *any* requested right-of-way to any requesting telecommunications carrier, regardless of whether Qwest believes it has the right to convey any interest, the definition of "ownership or control" is largely academic. The argument over the definition has centered around the extent to which Qwest has the right to convey access to right-of-way. By definition, however, a quitclaim conveyance has the legal effect of conveying the stated interest *to precisely the extent the grantor has the right to convey such interest.* Thus, the Quitclaim Agreement, by its inherent nature, operates to eliminate the need for defining ownership and control—if Qwest has the legal power to convey, and something to convey, regardless of how that power is defined, the Quitclaim Agreement will convey the interest. In short, Qwest will quitclaim a right of access whenever it is requested to do so and the conditions precedent are satisfied—it is then up to the telecommunications carrier to determine what, if anything, was conveyed.[11]

For purposes of clarity, however, Qwest believes that AT&T's proposed definition of "ownership or control," is more cumbersome and vague than the one Qwest offers. Moreover, it adds nothing to the concept of "ownership or control," since a carrier either has "ownership or

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[9] *E.g.*, 47 C.F.*R. § 1.1402.*

[10] *See generally* Order on Reconsideration.

[11] Nothing in the Telecommunications Act requires a LEC to undertake a legal analysis or provide legal services for other telecommunications carriers, which is the only remaining step necessary to make full use of Qwest's right-of-way after the Quitclaim Agreement has been provided to the requesting carrier. Qwest declines to undertake such legal analysis on behalf of its competitors.

control" over property or it does not. Also, in light of Qwest's agreement to provide the Quitclaim Agreement, those terms are entirely unnecessary.

Each of Qwest's proposed revisions is reasonable and lawful, and gives full effect to the requirements of the Act. The Commission should adopt them.

C. The Commission Should Adopt Qwest's Redactions and Redaction Principles

Checklist item 3 is limited to determining whether Qwest provides "nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by" Qwest.[12] As Qwest argued in the follow up workshop and in its previous position paper, MDU agreements, such as Exhibits 58 and 59, simply are not right-of-way or easement agreements. They grant no real property interest to Qwest, nor do they permit Qwest to convey any property interest or grant access to CLECs.[13]

The Commission should reject AT&T's arguments for the further reason that this Section 271 docket is not the appropriate forum to address AT&T's novel (and controversial) request. In its *SBC Texas Order*, the FCC expressly rejected the position that Section 271 proceedings can be used "as a forum for the mandatory resolution of many . . . local competition disputes, including disputes on issues of general application that are more appropriately the subjects of industry-wide notice-and-comment rulemaking."[14] The FCC further stated that such claims are "irreconcilable with" the 271 statutory scheme.[15]

> There may be other kinds of statutory proceedings, such as certain complaint proceedings, in which we may bear an obligation to resolve

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[12] 47 U.S.C. § 271(c)(2)(B)(iii).

[13] Notwithstanding these significant objections, Qwest nevertheless is prepared to quitclaim whatever right of access (if any) is contained in the MDUs, and will agree to waive its own claim to the confidentiality of the agreements, subject to the conditions set forth in the Quitclaim Agreement.

[14] *SBC Texas Order* ¶ 23.

[15] *Id.* ¶ 24.

> particular interpretative disputes raised by a carrier as the basis for its complaint. But the section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as precondition to granting a section 271 application.[16]

The FCC further stated:

> Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular State at a particular time. Such *fast-track, narrowly focused adjudications* -- generally dominated by extremely fact-intensive disputes about an individual BOC's empirical performance -- are often *inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability*. If Congress had intended to compel us to use section 271 proceedings for that purpose, *it would not have confined our already intensive review to an extraordinarily compressed 90-day timetable*.[17]

Also, if such policy disputes were handled in this docket, the public's interest in local and interLATA competition would be irretrievably harmed. Section 271 was intended to provide an incentive to Qwest to comply with the checklist items in order to be able to enter the interLATA market. The FCC found "[t]hat hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freighting their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor."[18]

Notwithstanding the foregoing, on the assumption that AT&T is acting in good faith, Qwest is willing to provide a Quitclaim Agreement with respect to MDU agreements or other agreements that AT&T believes may create conveyable real property interests.[19] Accordingly, if

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[16] *Id.* (footnotes omitted).

[17] Emphasis added.

[18] *Id.* ¶ 26.

[19] As noted above, it is the telecommunications carrier's responsibility to undertake the legal analysis of what real property rights, if any, are conveyed by the Quitclaim Agreement.

AT&T or another CLEC believes an MDU agreement grants them access, they are free to test their beliefs. As set forth above, however, this is an undertaking for the CLEC, not Qwest.

In this vein, Qwest will also provide copies of the MDU agreements, to the extent that the landowner agrees to waive its own right to confidentiality or privacy. As OCC agrees, neither Qwest nor this Commission has the unilateral power to waive confidentiality restrictions in agreements with private landowners unrepresented in this proceeding, nor should Qwest or the Commission attempt to force private property owners to reveal their dealings with telecommunications carriers against their will. Thus, where the property owner who is a party to an unrecorded agreement declines to waive its confidentiality or privacy rights, that ends the matter for any CLEC. To give effect to this concept, Qwest has developed a process whereby a requesting carrier must obtain the consent of the property owner to waive the confidentiality provision of the applicable unrecorded agreement. If the requesting carrier obtains such a waiver, Qwest will provide a copy of the MDU agreement to the requesting carrier, subject to limited, reasonable redactions discussed below. However, if the property owner refuses, Qwest will not provide a copy to the requesting carrier, as Qwest has no legal authority to waive the confidentiality right on behalf of unrepresented third party property owners..

For those unrecorded agreements for which the CLEC obtains the consent of the property owner to waive its confidentiality/privacy rights, Qwest will also agree to waive its confidentiality rights, except for the monetary terms of the agreements. Thus, when Qwest receives a properly executed and acknowledged Consent (which is a part of the Quitclaim Agreement) Qwest will provide a copy of the unrecorded document with only the monetary terms redacted. This redaction principle is simple and reasonable. There is no legitimate need for AT&T or CLECs to know the monetary terms of Qwest's agreements to verify whether Qwest

can provide access to the property, which is AT&T's stated concern for wanting these agreements in the first place. Moreover, pricing issues are both proprietary and competitively sensitive. Since CLECs have no interest in the MDUs or other unrecorded instruments beyond verifying the scope (or lack thereof) of Qwest's access to property, CLECs should not be permitted to obtain monetary or pricing terms from Qwest's agreements with private landowners.

Qwest has applied these principles to Exhibits 58 and 59 as the Commission instructed.

CONCLUSION

AT&T has never requested access to a single easement or other right-of-way from Qwest in Colorado. Rather, this entire dispute arises from AT&T's desire to obtain access to Qwest's MDU agreements with private landowners. Aside from the dubious claim that the MDUs create right-of-way, AT&T has no legitimate interest in the MDUs whatsoever.

Giving AT&T the benefit of the assumption that AT&T believes, in good faith, that the MDUs do, somehow, create a "shareable" real property interest, Qwest has nevertheless created a program to give AT&T and any other CLEC the full extent of what Qwest has the legal right to give—subject only to conditions reasonably crafted to protect Qwest's and unrepresented third parties' property rights and other business interest, which neither Qwest nor the third parties have any obligation to place at risk.

Qwest has more than met its obligations to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way. The Commission should find that Qwest satisfies the requirements of 47 U.S.C. § 271(c)(2)(B)(iii).

Respectfully submitted,

QWEST CORPORATION

Kris A. Ciccolo, No. 17948
Charles W. Steese, No. 026924
QWEST LAW DEPARTMENT
1801 California Street
Suite 5100
Denver, CO 80202
(303) 672-2884

ATTORNEY FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the above and foregoing **QWEST'S POSITION REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AND PRIVATE RIGHTS-OF-WAY AGREEMENTS AND QWEST'S REDACTION PRINCIPLES** was hand delivered this 14th day of July, 2000, to the following:

Mr. Bruce N. Smith
Colorado Public Utilities Commission
Executive Secretary
1580 Logan St., Office Level 2
Denver, CO 80203

and a copy has been hand delivered on the following:

**Joseph Molloy
Colorado Public Utilities Commission
1580 Logan St., OL-2
Denver, CO 80203

**Mana Jennings-Fader
Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

and a copy was served electronically to each person on the e-mail distribution list for this docket.

EXHIBIT D

Date General Information Provided by ~~USW:~~Qwest: _____
General Agreement Number : _____
BAN Number(must be assigned before processing): _____

~~REVISED U S WEST POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY~~
REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 3/13/00

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain Co-Provider's facilities ("Facilities") to ~~U S WEST Communications, Inc.'s ("USW") Poles or~~Qwest Corporation's ("Qwest") Poles, to place Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to ~~"Poles/Innerduct").~~Qwest's private right of way ("ROW"), to the extent Qwest as the right to grant such access. This General Information is necessary to determine if ~~USW~~Qwest can meet the needs of the Co-Provider's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-~~first-~~come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.

2. **PROCESS**. The ~~USW~~Qwest process is designed to provide the Co-Provider the information so as to assist Co-Provider and ~~USW to make Poles and~~Qwest to make ROW Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

   2.1 Inquiry Attachment 1.A (Database Search). The Co-Provider is requested to review this document and return Form 1.A along with two copies of a map and the nonrefundable Inquiry Preparation Fee, calculated in ~~the amount of One Hundred Fourteen Dollars ($114.00) per mile (with a One Hundred Fourteen Dollar minimum) for Pole Review, or the Innerduct Review Fee in the amount of One Hundred Seventy One Dollars ($171.00) per mile (with a One Hundred Seventy One Dollar minimum),~~accordance with Attachment 1.A hereto. These fees are intended to cover ~~USW's~~Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, ~~public record review~~, setting up an account, and determining time frames for completion of each task to meet the Co-Provider's Request. Please be sure a BAN number is assigned by the Product Manager (call 303-896-0789) before sending form 1.A.

   As indicated on Form 1. A, a copy of the signed form and maps of the desired route should be sent to the Product Manager while the fee should be sent to the ~~U S WEST~~Qwest CLEC Joint Use Manager with the original signed form 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be equal to the best street maps available. ~~U S WEST~~Qwest Central Offices should be identified where possible. Faxes are not acceptable. If Co-Provider wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps.

   ~~USW~~Qwest will complete the Inquiry review and prepare and return a Innerduct Permit Processing Costs Quotation (Attachment 1.B) to the Co-Provider generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, ~~USW~~Qwest will assign a Field Engineer and provide his/her name and phone number to the Co-Provider. The Field engineer will check the local database and be available for a joint verification with the Co-Provider. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer. The Poles/Innerduct Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of ~~USW~~Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix, within ten (10) days, which will identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., easement, license, etc.). The ROW information matrix will also indicated whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and Co-Provider acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 ~~2.2~~ Request Attachment 1.B (Verification). ~~Upon~~With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the Co-Provider, ~~USW~~Qwest will conduct facilities verification and provide the requested information which may or may not include the following:a review of public and/or internal ~~USW~~ Qwest right-of-ways records for restrictions,, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the Co-Provider, if applicable, prior to installing its facilities. In the case of Poles, form 1.B orders the field verification which may be done jointly. Such work shall be completed within thirty-five (35) days for a standard inquiry of one hundred (100) poles (or fewer), or thirty (30) Utility Hole sections (or fewer), or as negotiated between ~~USW~~Qwest and Co-Provider and identified in Attachment 1.B. A copy of the signed Form 1.B should be sent to the Product Manager while the appropriate fees should be sent to the~~USW-CLEC~~Qwest-CLEC Joint Use Manager with the original signed 1.B form. Upon completion of the verification, Attachment 2 will be sent to the Co-Provider by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the Co-Provider ~~by USW~~.
an executed and acknowledged Quitclaim of Right of Access Agreement to the Co-Provider in the form attached hereto as Attachment 4 (the "Quitclaim"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the Quitclaim, will be attached to the Quitclaim and provided to the Co-Provider at the time of delivery ~~to the Co-Provider~~ of the Quitclaim. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Easement Agreement in its possession, the Quitclaim will not have a copy of the Easement Agreement attached.

2.3 ~~2.3~~ Order Attachment 2 (Access). ~~Upon~~In the case of Poles and Innerduct, uponcompletion of the inquiry and verification work described in Section 2.2 above, ~~USW~~Qwest will provide the Co-Provider a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the Co-Provider and applicable payment for the Make-ready fees identified, ~~USW~~Qwest will assign the Co-Provider's requested space and complete the Make-ready work which may be required. ~~USW~~Qwest will notify Co-Provider when Poles/Innerduct are ready for attachment of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

In the case of ROW, after Qwest has delivered the Quitclaim (see Section 2.2 above), the Co-Provider will be required to obtain the property owner's notarized signature on the Consent that is a part of the Quitclaim. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the Co-Provider is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If

Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the Co-Provider to obtain a copy of the Easement Agreement. After the Co-Provider has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the Co-Provider must record the Quitclaim (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) Co-Provider must provide Qwest with a copy of the properly executed and acknowledged Consent~~;~~, (ii) upon receipt of such Consent, Qwest will provide the Co-Provider with a copy of the Easement Agreement with the monetary terms redacted~~;~~, and (iii) the Co-Provider must then record the Quitclaim, together with the Consent and the Easement Agreement, in the real property records for the county in which the property is located; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession~~,~~ the Co-Provider (i) must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the quitclaim, and (ii) must record the Quitclaim (with the Consent and the Easement Agreement or other documentation attached) in the real property records of the county in which the property is located. In any case, ~~R~~recordation of ~~ing~~ the properly completed, executed and acknowledged Quitclaim gives effect to Qwest's ~~conveyance~~ quitclaim of access to Qwest's ROW.

NOTE: Make-ready work performed by ~~USW~~Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". ~~USW~~Qwest will repair or clear damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The Co-Provider may contract separately with a ~~USW-approved~~Qwest-approved contractor to complete the construction provided a ~~USW~~Qwest inspector inspects the work during and after construction. Construction attaching to or entering ~~USW-owned~~Qwest-owned structure must conform to ~~USW~~Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The Co-Provider is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ~~Poles/Innerduct~~ ~~USW~~ROW/Poles/Innerduct Qwest agrees to issue to Co-Provider for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing Co-Provider to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned ~~in whole or in part~~ or controlled by ~~USW~~ ~~USW~~Qwest. Qwest provides access to Poles/Innerduct in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to Co-~~Co-~~Provider shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the Co-Provider.

The costs included in the Poles/Innerduct Permit Processing Costs Quotation are used to cover the costs incurred by ~~USW~~Qwest in determining if Poles/Innerduct space is available to meet the Co-Provider's request; however, the Co-Provider must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If ~~USW~~Qwest denies access to the Poles/Innerduct Request, or section thereof, ~~USW~~Qwest shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Quitclaim. In the event that complications arise with respect to preparing the Quitclaim or any other aspect of ~~granting~~quitclaiming access to Qwest's ROW, the Co-Provider agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time~~.~~,

3. **DISPUTE RESOLUTION**

a. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

b. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

c. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

d. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A

General Agreement No._____
BAN Number (must be assigned before processing):_____
Poles/Innerduct Inquiry Preparation Fee

Date Submitted:_____ Date Replied to Co-Provider: _____

Co-Provider Name: _____

Contact name:_____
Address: _____
Phone Number:_____
e-mail address:_____
State or location of inquiry:_____

Poles/Innerduct Permit Database Search Costs Quotation
(One Mile Minimum)

	Costs	Est. Miles	Total
1. Pole Database & Field Engineer inquiry	~~$ 114.00 per mile~~see attached pricing chart		_____
2. Innerduct Database inquiry	~~$ 171.00 per mile~~see attached pricing chart		_____
3. ROW Records inquiry	~~$ 171.00 per mile~~see attached pricing chart		_____

$_____ $_____ $_____

4. Estimated Interval for Completion of Items ~~1 or 2~~1, 2 and/or 3: 10 _____ Days

4.5. Additional requirements of Co-Provider: _____

This Inquiry will result in (a) in the case of Poles and Innerduct, a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of the necessary Quitclaims. In the case of Poles, the name and telephone number of the Field Engineer will be provided so that the Co-Provider may contact the ~~USW~~Qwest Field engineer and discuss attachment plans. If a field verification of the poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the Co-Provider desires ~~USW~~Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW~~Qwest offers such Poles/Innerduct.

	~~U S WEST Communications, Inc.~~
Signature	
	JOHN CARVETH

Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount ($114 per mile or $171 per mile) to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112
303-792-6990

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202 303-896-0789

ATTACHMENT 1.B

General Agreement No. _____
BAN Number: _____

Poles/Innerduct Verification Costs Quotation

Date Nonrefundable Received: Date Replied to Co-Provider: _____

NOTE: THIS ATTACHMENT WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO THE CO-PROVIDER FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.

Charge	Estimated Costs	Number	Total
1. Pole Field Survey (10 pole minimum) ~~per pole~~	see attached pricing chart	$	~~ICB~~
2. Innerduct Field Survey ~~per Manhole~~	see attached pricing chart	$	~~ICB~~
3. ROW Preparation of Quitclaims ~~per Quitclaim~~	$ per Quitclaim	$	~~$171~~

~~3.~~4. Estimated Interval for Completion of Items ~~1 or 2~~:1, 2 and/or 3: _____ Working Days

5. Additional requirements of Co-Provider: _____

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the Co-Provider desires ~~USW~~Qwest to proceed with the processing of its field survey/preparation of Quitclaims, and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW offers such Poles/Innerduct. The Co-~~Qwest offers such ROW/Poles/Innerduct. The Co-Provider acknowledges the above costs are estimates only and Co-Provider may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

A copy of this form signed form should be sent to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202

The original signed form should be sent with a check for the verification amount to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

1. SCHEDULE A—PRICING CHART

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

Inquiry and Verification, Poles and Ducts

STATE	POLE/ROW INQUIRY per mile***	DUCT INQUIRY per mile***	POLE VERIFICATION per pole***	DUCT VERIFICATION per manhole***
AZ	$	$	$	$
CO	$	$	$	$
ID	$	$	$	$
IA	$	$	$	$
MN	$	$	$	$
MT	$	$	$	$
NE	$	$	$	$
NM	$	$	$	$
ND	$	$	$	$
OR*	$	$	$	$
SD	$	$	$	$
UT	$	$	$	$
WA*	$	$	$	$
WY	$	$	$	$

***** Qwest is currently recalculating costs for all states. Figures for all states will be provided when they are available.**

* ordered rates by the state commission.

Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be $200.00 per pole or innerduct segment etween manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3.

ATTACHMENT 2

Poles/Innerduct Order

General Agreement No_____
BAN Number:_____

NOTE: THIS FORM WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO CO-PROVIDER FOR SIGNATURE

Make-ready Work required: Yes ( ) No ( ) Date Received:_____

If Yes is checked, estimated Make-ready costs: $_____
Note: Make-Ready charges do not include construction work to enhance infrastructure

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - _____
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, Co-Provider must:
   a. provide ~~USW~~Qwest representative, a final design showing splice, racking and slack locations in ~~USW~~Qwest utility holes.
   b. tag all equipment located in/on ~~USW's~~Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) Co-Provider's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. Per Pole Attached	$ _____ /Foot/Pole	_____	$_____
2. Per Innerduct Foot	$ _____ /Foot		$
Total Annual Recurring Charges			$

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you choose not to place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO_____ (/DAY * DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge, the Co-Provider desires ~~USW~~Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which ~~USW~~Qwest offers such Poles/Innerduct. By signing this document you are leasing the available space.

Return this signed form and check to: Pam ~~Fisher, U S WEST~~Fisher, **Qwest CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112**

Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

~~U S WEST~~Qwest Field Engineer: _____

Phone Number: _____

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

ATTACHMENT 3

General Agreement No._____

~~U S WEST POLE AND~~QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY
GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ ("Co-Provider") and ~~U S WEST Communications, Inc. ("USW")~~,Qwest Corporation ("Qwest"), for one or more Orders for the Co-Provider to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to ~~USW's~~Qwest's Poles and/or placement of Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and Co-Provider Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.*,an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

1.1 Subject to the provisions of this Agreement, ~~USW~~Qwest agrees to issue to Co-Provider for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing Co-Provider to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned in whole or in part by ~~USW~~Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the Co-Provider. Any and all rights granted to Co-Provider shall be subject to and subordinate to any future local, state and/or federal ~~requirements~~.
requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.

1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by Co-Provider or to obtain any ROW for Co-Provider's use.

1.3 ~~USW~~Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. TERM. Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Quitclaim (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time Co-Provider is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

3.1 ~~Co-Provider~~To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to ~~USW,~~the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.

3.3 If ~~USW~~Qwest terminates this Agreement for Cause, or if Co-Provider terminates this Agreement without Cause, Co-Provider shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause ~~USW~~Qwest to remove its Facilities from the Poles/Innerduct at Co-Provider's expense; provided, however, that Co-Provider shall be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until Co-Provider's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

3.4 If this Agreement or any Order is terminated for reasons other than Cause, then Co-Provider shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that ~~Co-Provider shall~~Co-Provider shall be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until Co-Provider's Facilities are physically removed.

3.5 ~~USW~~Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the Co-Provider. Upon abandonment of Poles/Innerduct, and with the concurrence of the other Co-Provider(s), if necessary, Co-Provider shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from ~~USW,~~Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. **CHARGES AND BILLING.**

4.1. Co-Provider agrees to pay ~~USW~~Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. Co-Provider shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. ~~USW~~Qwest has the right to revise Fees, at its sole discretion, upon written notice to Co-Provider within at least sixty (60) days prior to the end of any annual billing period.

5. **INSURANCE.** The Co-Provider shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars ($100,000.00) for each accident.

5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the Co-Provider hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to

as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4 ~~USW~~Qwest may require the Co-Provider from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by ~~USW~~Qwest shall be borne by ~~USW and the Co-Provider~~ Qwest, and the Co-Provider shall arrange to have such costs billed separately and directly to ~~USW~~Qwest by the insuring carrier(s). ~~USW~~Qwest shall be authorized by the Co-Provider to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the Co-Provider's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a hole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by ~~USW~~Qwest. The Co-Provider shall forward to ~~USW~~Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) ~~USW~~Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to ~~USW~~Qwest; (3) certification that underground hazard overage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The Co-Provider shall not commence work hereunder until the obligations of the Co-Provider with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the Co-Provider of any liability hereunder or in any way modify the Co-Provider's obligations to indemnify ~~USW~~Qwest.

5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars ($6,000,000.00). In addition, said policy shall name ~~USW~~Qwest and the Co-Provider/SubCo-Provider on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the ~~USW~~Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

CONSTRUCTION AND MAINTENANCE OF FACILITIES.

6.1 ~~USW~~Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a ~~USW~~Qwest spare conduit include the placement of innerduct, ~~USW~~Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event ~~USW~~Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before Co-Provider's Facilities can be accommodated, the cost of such modification will be included in the Co-Provider's nonrecurring charges for the associated Poles/Innerduct Order.

6.2 Co-Provider shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and ~~USW~~Qwest does not warrant or represent that providing Co-Provider with access to the Poles/Innerduct in any way constitutes such legal right. The Co-Provider shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the Co-Provider's sole expense, in order to perform its obligations under this Agreement. The Co-Provider shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide ~~USW~~Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The Co-Provider shall comply with all conditions of rights-of-way and Orders.

6.3 Co-Provider's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. ~~USW's~~Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate ~~USW~~Qwest premises. Co-Provider's procedures governing its standards maintenance practices for Facilities shall be made available to ~~USW~~Qwest upon written request. Co-Provider shall within thirty (30) days comply and provide the requested information to ~~USW~~Qwest to bring their facilities into compliance with these terms and conditions.

6.4. In the event of any service outage affecting both ~~USW~~Qwest and Co-Provider, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.

6.5 In the event of an infrastructure outage, the Co-Provider should contact their Network Maintenance Center ~~at 1-800-223-7881~~ at 1-800-223-7881 or the Co-Provider may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

7.1. If Co-Provider requests ~~USW~~Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the Co-Provider and ~~USW~~Qwest determines in its sole discretion to provide the requested capacity, the Co-Provider shall pay ~~USW~~Qwest the total replacement cost, ~~USW's~~Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in ~~USW~~Qwest. To the extent that a modification is

incurred for the benefit of multiple parties, Co-Provider shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and Co-Provider shall be responsible for its pro rata share of the modification cost. Except as set forth herein, Co-Provider shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of ~~USW~~Qwest shall be provided to Co-Provider at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If Co-Provider does not rearrange its facilitates within sixty (60) days after receipt of written notice from ~~USW~~Qwest requesting such rearrangement, ~~USW~~Qwest may perform or cause to have performed such rearrangement and Co-Provider shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. INSPECTION OF FACILITIES. ~~USW~~Qwest reserves the right to make final construction, subsequent and periodic inspections of Co-Provider's facilities occupying the Poles/Innerduct system. Co-Provider shall reimburse ~~USW~~Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. Co-Provider shall provide written notice to ~~USW~~Qwest, at least fifteen (15) days in advance, of the locations where Co-Provider's plant is to be constructed.

8.2. The Co-Provider shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to ~~USW~~Qwest within five (5) business days of the date(s) of the occupancy.

8.3. ~~USW~~Qwest shall provide written notification to Co-Provider within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by ~~USW~~Qwest has been completed, Co-Provider shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from ~~USW~~Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether Co-Provider has energized the facilities occupying said Poles/Innerduct system, unless ~~USW~~Qwest has provided Co-Provider a written extension to comply. Co-Provider shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to Co-Provider until such non-complying conditions are corrected or until Co-Provider's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, ~~USW~~Qwest shall perform such corrections and Co-Provider shall pay ~~USW~~Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken my be made by ~~USW~~Qwest.

8.5. Once the Co-Providers facilities occupy ~~USW~~Qwest Poles/Innerduct system and Exhibit A has been received by ~~USW~~ ~~USW~~Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by ~~USW~~Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that Co-Provider has failed to comply with the provisions set forth in this Agreement, in which case the Co-Provider shall reimburse ~~USW~~Qwest for full costs of inspection, and re-inspection to determine compliance as required. A Co-Provider representative may accompany ~~USW~~Qwest on field inspections scheduled specifically for the purpose of inspecting Co-Provider's Facilities; however, Co-Provider's costs associated with its participation in such inspections shall be borne by Co-Provider. ~~USW~~Qwest shall have no

obligation to notify Co-Provider, and Co-Provider shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the Co-Provider within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon ~~USW~~ Qwest, and shall not relieve Co-Provider of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITITES

9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USW, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars ($200.00) per attachment per Pole or innerduct run between manholes, and require the Co-Provider to submit in writing, within ten (10) day after receipt of written notification from USW of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USW within the specified time period, the Co-Provider will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USW may remove the Co-Provider's facilities without liability, and the cost of such removal shall be borne by the Co-Provider.

9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not Co-Provider is ordered to continue the occupancy of the Poles/Innerduct system.

9.3. No act or failure to act by ~~USW~~ Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by ~~USW~~ Qwest of any of its rights of privileges under this Agreement or otherwise.

10. **REMOVAL OF FACILITIES**. Should ~~USW~~ Qwest, under the provisions of this Agreement, remove Co-Provider's Facilities from the Poles/Innerduct covered by any Order (or otherwise), ~~USW~~ Qwest will deliver the Facilities removed upon payment by Co-Provider of the cost of removal, storage and delivery, and all other amounts due ~~USW~~ Qwest. If payment is not received by ~~USW~~ Qwest within thirty (30) days, Co-Provider will be deemed to have abandoned such facilities, and ~~USW~~ Qwest may dispose of said facilities as it determines to be appropriate. If ~~USW~~ Qwest must dispose of said facilities, such action will not relieve Co-Provider of any other financial responsibility associated with such removal as provided herein. If Co-Provider removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the Co-Provider shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to ~~USW~~ Qwest for previous occupancy have been paid in full. Co-Provider shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by Co-Provider," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by Co-Provider," each as attached hereto, advising ~~USW~~ Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

11. **INDEMNIFICATION AND LIMITATION OF LIABILITIES.** Co-Provider shall indemnify and hold harmless ~~USW~~ Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof,

furnished, installed or utilized by the Co-Provider; (2) actual or alleged fault or negligence of the Co-Provider, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by Co-Provider under this Contract or any product liability claims relating to any material supplied by Co-Provider under this Contract; (4) failure of Co-Provider, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by Co-Provider or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of ~~USW~~ Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the ~~USW~~ Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the Co-Provider. If both ~~USW~~ Qwest and the Co-Provider are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the Co-Provider, if ~~USW~~ Qwest desires. ~~USW~~ Qwest shall give the Co-Provider reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the Co-Provider's request and at the Co-Provider's expense all information and assistance available to the ~~USW~~ Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CO-PROVIDER ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST ~~USW~~ QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CO-PROVIDER, AND THE CO-PROVIDER EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF ~~USW~~ QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF ~~USW~~ QWEST WHEN CONCURRENT WITH THAT OF THE CO-PROVIDER.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. FORCE MAJURE

12.1 The Co-Provider shall be excused from its performance as to any Order if prevented by acts or events beyond the Co-Provider's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, ~~USW~~Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the Co-Provider is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the Co-Provider is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 ~~USW~~Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by ~~USW~~Qwest after the contingency occurs. With respect to ~~USW's~~Qwest's election of Section 12.2.3 above:

12.3.1 ~~USW~~Qwest shall give the Co-Provider written notice of the work to be performed by such other party prior to its performance and shall deduct from the Co-Provider's price the cost of the work or services actually performed by such other parties.

12.3.2 The Co-Provider shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the ~~USW's~~Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 ~~USW~~Qwest shall be excused from its performance if prevented by acts or events beyond the ~~USW's~~Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C.

Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The Co-Provider represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The Co-Provider acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which Co-Provider shall remain fully liable.

15. **SEVERABILITY**. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16. **GENERAL PROVISIONS**.

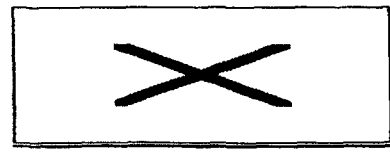
16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

16.2 This Agreement shall not be assignable by Co-Provider without the express written consent of ~~USW~~Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by Co-Provider to Co-Provider's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that Co-Provider must obtain ~~USW's~~Qwest's consent in any event.

16.3 This Agreement benefits Co-Provider and ~~USW~~Qwest. There are no third party beneficiaries.

16.4 This Agreement constitutes the entire understanding between Co-Provider and ~~USW~~Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

Co-Provider Corporation	~~ications, Inc.~~Qwest
	
Signature	Signature

Name Typed or Printed	JOHN CARVETH Name Typed or Printed
Title	PRODUCT MANAGER Title
Date	Date

~~Address for Notices~~ ~~Contact:~~ ~~Phone:~~ ~~FAX:~~	~~Address for Notices~~ ~~U S WEST Communications, Inc.~~ ~~1801 California, Rm. 2330~~ ~~Denver, CO 80202~~ ~~Contact: JOHN CARVETH~~ ~~Phone: 303-896-0789~~ ~~FAX: 303-896-9022~~
Address for Notices Contact: Phone: FAX:	Address for Notices Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202 Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022

EXHIBIT A

PULLING IN REPORT

_____ 19___

~~U S WEST Communications, Inc.~~Qwest Corporation

_____

_____

This is to advise you that pursuant to General Agreement No._____ granted to us under the terms of the Innerduct Agreement dated _____ , 1999 we have completed installation of the following cable into the following ducts.

Municipality

Location

From Manhole at	To Manhole at	Cable and Equipment Installed	Date

_____
Name of Co-Provider

By:_____
Title:_____

Receipt of the above report is hereby acknowledged_____ , 19___.

~~U S WEST Communications, Inc.~~Qwest Corporation

By:_____
Title:_____

1. Reports shall be submitted in duplicate.

2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ___, unless a change has been previously authorized in writing by Licensor.

EXHIBIT B

Co-Provider:_____

NOTIFICATION OF SURRENDER OR MODIFICATION
OF CONDUIT OCCUPANCY ORDER BY CO-PROVIDER

Street Address _____
City and State_____
Date_____

~~U S WEST, Inc.~~Qwest Corporation

In accordance with the terms and conditions of this Agreement between us, dated_____, 19___, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated _____ , 19__) effective_____ _____ .

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED

_____
Name of Licensor

_____
Name of Co- Provider

_____
Date Notification Received

By_____

_____
Date Modification Accepted

Title_____

By _____

Discontinued:

Total duct footage_____

_____
Co-Provider

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY CO-PROVIDER

Street Address _____
City and State _____
Date _____

~~U S WEST, Inc.~~Qwest Corporation
In accordance with the terms and conditions of the Agreement between ~~USW~~Qwest and Co-Provider, dated _____,
19__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in Co-Provider's prior notification to ~~USW~~,Qwest,
dated _____, 19__) effective _____.

	POLE NO.	ASSOC.POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC.RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			
10.		A A/GS -			
11.		A A/GS -			
12.		A A/GS -			
13.		A A/GS -			

Date Notification Received _____
Date Modification Received _____
By: _____

_____
Name of Co-Provider

Discontinued:

By: _____

Poles _____
Anchors _____
Anchor/Guy Strands _____

Its: _____

~~ATTACHMENT 4~~

~~QUITCLAIM RIGHT OF ACCESS AGREEMENT~~

ATTACHMENT 4
FORM OF QUITCLAIM RIGHT OF ACCESS AGREEMENT

After recording, please return to:

Qwest Corporation
1801 California Street
Suite 2330
Denver, Colorado 80202

Attention: Structure Project Manager

QUITCLAIM RIGHT OF ACCESS AGREEMENT

THIS QUITCLAIM RIGHT OF ACCESS AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address is _____, and _____, a _____, whose address is _____ ("Grantee").

RECITALS

A. This Agreement relates to certain real property (the "Property") located in the County of _____ (the "County"), State of _____ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to quitclaim to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such quitclaim conveyance.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby quitclaims to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights quitclaimed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Consent by Owner. Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. Recordation of Agreement. Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with

the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the

legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by:

QWEST CORPORATION, a Colorado corporation,
successor in interest to
U S WEST COMMUNICATIONS, INC.,
a Colorado corporation

By:
Name:
Title:

STATE OF)
) ss:
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of
, 2000, by as
of QWEST CORPORATION, a
Colorado corporation.

Witness my hand and official seal.

(SEAL)

Notary Public
My Commission Expires:

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____, a _____

By: _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

CONSENT TO QUITCLAIM RIGHT OF ACCESS AGREEMENT

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the foregoing Quitclaim Right of Access Agreement (the "Agreement"), as required therein. This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee.

2. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the Right of Way Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Right of Way Agreement as set forth in Section 4 of this Consent and the right to bind Owner to grant the notice and cure period as set forth in Section 5 of this Consent.

3. Owner's Acknowledgments. Owner expressly acknowledges that (a) Owner has received and reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect Owner's rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner's attorney; (c) the Agreement, with this Consent attached, will be recorded in the real property records of the County and will become a public record, and Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement and the Right of Way Agreement confidential; and (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a telecommunications carrier, as defined in 42 U.S.C. § 224, such as Grantee.

4. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner's alleged right to confidentiality relating to the Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

5. Notice and Cure Period. Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such default within thirty (30) days after notice, or, if such default cannot reasonably be cured in such 30-day period, Grantor shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Owner further agrees not to invoke any of its remedies, either express or implied, under the Right of Way Agreement, unless such default shall remain uncured following such notice and grace period.

6. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____,

a _____

By: _____

Name: _____

Title: _____

STATE OF _____)
_____) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____

_____

Notary Public

My Commission Expires:

_____

EXHIBIT 1

Right of Way Agreement

information necessary for the billing statement becomes available.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership and control to do so, each Party will provide the other with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.[1]

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a Pole owned or controlled by U S WEST.[2]

10.8.1.2 Ducts and Conduits – Where it has ownership ~~and~~or control to do so, each Party will provide the other with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services.[3] A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in U S WEST immediately upon installation; ownership of such innerduct shall vest to U S WEST if and when CLEC abandons such innerduct. Duct and conduit may follow streets, bridges, public or private right-of-ways or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.[4]

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building.[5]

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.[6]

10.8.1.3 ~~10.8.1.3~~ Rights of Way (ROW) – Where it has ownership or control to do so, CLEC will provide Qwest access to ROW. Where it has ownership or control to do so, U S WEST will provide, via a quitclaim without warranty, to CLEC, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services.[7] ~~ROW includes~~

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1 Washington Workshop June 21-23, 2000 (proposed)
2 Colorado Workshop (proposed 7/14/00).
3 Washington Workshop July 6, 2000 (proposed)
4 Colorado Workshop August 1-3, 2000 (proposed)Washington Workshop July 6, 2000 (consensus)
5 Colorado Workshop (proposed 7/14/00)
6 Colorado Workshop (proposed 7/14/00)
7 Colorado Workshop (proposed 7/14/00)

10.8.1.3.1 "Right of Way" or "ROW" means privately-owned land or other property, but expressly excludes any public, governmental, federal or Native American, or other quasi-public or non-private lands, ~~owned or controlled by U S WEST~~ and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.[8]

10.8.2 Terms and Conditions

U S WEST shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised U S WEST Right of Way, Pole Attachment and/or Innerduct Occupancy General Information dDocument ~~U S WEST Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions~~ attached hereto as Exhibit D.[9] U S WEST will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. US WEST shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, U S WEST agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by U S WEST, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 U S WEST will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to U S WEST facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. U S WEST agrees to provide to CLEC access to relevant plats, maps, engineering records and other data, including, in the case of ROW, a ROW Information Matrix (a "ROW Matrix") identifying for each ROW the name of the original grantor and the nature of the ROW (e.g., easement, lease, etc.) within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from ~~multiple locations~~more than one (1) location, span

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[8] Colorado Workshop (proposed 7/14/00)

[9] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

~~multiple~~more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.[10] ~~when extensive requests involve the gathering of plats from multiple locations.~~

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel U S WEST to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.[11]

10.8.2.6 U S WEST retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event U S WEST determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a U S WEST spare conduit include the placement of Innerduct, U S WEST or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 U S WEST shall make manhole ingress and egress for Innerduct access available to CLEC. U S WEST will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4.[12] CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by U S WEST or CLEC at the option of CLEC.

10.8.2.9 Access to a U S WEST Central Office manhole will be permitted where technically feasible. If space is available, U S WEST will allow access

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[10] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[11] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[12] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests U S WEST to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay U S WEST the total actual replacement cost, U S WEST's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to U S WEST. Upon request, U S WEST shall permit CLEC to install Poles/Innerduct. U S WEST reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including U S WEST or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, U S WEST or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. U S WEST does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of U S WEST and at U S WEST's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from U S WEST requesting rearrangement, U S WEST may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at U S WEST's expense.

10.8.2.12 U S WEST reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse U S WEST for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by U S WEST has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by U S WEST in its written notice. If corrections are not completed within the specified reasonable period, occupancy

authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. U S WEST may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, U S WEST shall perform or have performed such corrections and CLEC shall pay U S WEST the cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by U S WEST.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, U S WEST may perform a reasonable number of inspections. U S WEST shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of ~~this Agreement~~Section 10.8.2.20; in which case CLEC shall reimburse U S WEST the costs of inspections and re-inspections, as required.[13] CLEC's representative may accompany U S WEST on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon U S WEST nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.[14]

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as U S WEST's workers. CLEC may use any contractor approved by U S WEST to perform Make-Ready Work.

10.8.2.18 If U S WEST terminates an ~~o~~Order for cause, or if CLEC terminates an ~~o~~Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~o~~Order(s) and shall remove its facilities from the Poles/Innerduct

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[13] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[14] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

within sixty (60) calendar days, or cause U S WEST to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to U S WEST until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to U S WEST's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Quitclaim Right of Access Agreement (the "Quitclaim") by which U S WEST quitclaimed a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to U S WEST or its predecessor.[15]

10.8.2.19 U S WEST may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from U S WEST at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as U S WEST, its Affiliates or any other Telecommunications Carrier is held.[16] Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. ~~U S WEST's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate U S WEST premises CLEC's standard maintenance practices for facilities shall be made available to U S WEST upon request.~~[17] CLEC shall in a timely manner comply

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[15] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[16] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus)

[17] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

with all requests from U S WEST to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should U S WEST under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, U S WEST will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due U S WEST. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due U S WEST for previous occupancy have been paid in full. CLEC shall advise U S WEST in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, U S WEST, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. U S WEST shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D) within thirty (30) calendar days of written notification from U S WEST of the unauthorized attachment; and (2) the unauthorized attachment did not require U S WEST to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. U S WEST shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by U S WEST rather than CLEC.[18] CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from U S WEST of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by U S WEST within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or U S WEST may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by U S WEST with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by U S WEST of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 U S WEST will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and

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[18] Colorado Workshop August 1-3, 2000 (proposed)Washington Workshop July 6, 2000 (consensus)

regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between ~~Attachment 1~~Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided, however, that any Quitclaim that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.[19]

10.8.2.25 Nothing in this SGAT shall require U S WEST to exercise eminent domain on behalf of CLEC.

10.8.3 Rate Elements

U S WEST fees for attachments are in accordance with Section 224 of the Act and FCC order, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or, with respect to ROW, to determine the information necessary to create the ROW Matrix. ~~for lease.~~ Separate Inquiry Fees apply for ROW, poles and ~~for~~ conduit/innerduct.[20]

10.8.3.2 Field Verification Fee/Quitclaim Preparation Fee. In the case of Poles and Innerduct, ~~A~~the field verification fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. In the case of ROW, the quitclaim preparation fee is a non-refundable pre-paid charge which recovers the estimated actual costs for preparation of the Quitclaim for each ROW requested by the CLEC. ~~-~~These estimated pre-paid fees shall be billed in advance. ~~-~~Separate Field Verification Fees apply for ROW, poles and ~~for~~ manholes.[21]

10.8.3.3 Make-Ready Work. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility available for ~~lease~~access. For innerduct ~~leases~~, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is

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[19] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[20] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[21] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this could include, but is not limited to, personnel time, including attorney time. The estimated pre-paid fee for Poles/Innerduct shall be billed in advance.[22]

10.8.3.4 Pole Attachment Fee. A fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.[23]

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis.[24] This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 ROW Access Fee. A pre-paid fee which constitutes consideration for quitclaiming the ROW to CLEC ~~is charged for the access, including during any Make-Ready period, to ROW.~~ This fee shall be a one-time (i.e., non-recurring) fee ~~annual unless CLEC requests that it be semi-annual~~.[25]

10.8.4 Ordering

~~The Ordering Process has~~ There are two (2) steps required before placing an Order for ~~ROW~~ access to ROW, Innerduct and Pole Attachment: Inquiry Review and Field Verification.[26] ~~distinct steps for ROW, Innerduct and Pole Attachment~~:

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ~~request for~~ ROW access, Pole Attachment or Innerduct Occupancy, U S WEST will provide CLEC with ~~a document of General Information for Pole Attachment and Innerduct Occupancy~~ Exhibit D ~~along with a description of the application process~~[27] The CLEC will review the documents and provide U S WEST with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on U S WEST owned or

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[22] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[23] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[24] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[25] Colorado Workshop (proposed 7/14/00) ~~Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)~~

[26] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[27] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

controlled Poles, Innerduct and ~~by~~ ROW. The CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.~~B~~A from Exhibit D.[28] ~~its inquiry~~.

~~10.8.4.2 Inquiry Reviews~~

10.8.4.1.1 ~~a)~~ Inquiry Review – ~~Innerduct~~*Duct/Conduit*.[29] U S WEST will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 ~~b)~~ Inquiry Review – Poles. U S WEST will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.[30] ~~The U S WEST field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time~~.

10.8.4.1.3 Inquiry Review – ROW. U S WEST shall, upon request of CLEC, provide ~~a copy of ROW agreements (e.g. easements and licenses)~~the ROW Matrix to CLEC within ~~forty-five (45)~~ ten (10) days of the request. U S WEST makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that U S WEST's files contain only the original ROW instruments, and that the current

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[28] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[29] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

[30] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop June 21-23, 2000 (proposed)

owner of the fee estate may not be the party identified in the document provided by U S WEST.[31]

10.8.4.~~3~~2 ~~Request – Innerduct~~Field Verification ~~–~~(Poles and ~~,~~Ducts), and Quitclaim Preparation (ROW) ~~and ROW~~. CLEC will review the Inquiry results and determine whether to proceed with verification. If desired, CLEC will sign and return Attachment 1.B of ~~the General Information document~~ Exhibit D along with a check for the ~~estimated~~ verification ~~costs~~fee. Upon payment of the ~~estimated~~ verification ~~costs~~fee, U S WEST will provide as applicable: depending on whether the request is for Poles~~,~~ ~~or~~ InnerdDuct or ROW: ~~Innerduct and/or ROW, the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required; and from whom;~~ (a) in the case of Poles or Innerduct, a field survey and site investigation of the Poles or D/Innerduct ~~or ROW~~, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make~~-~~Ready costs required to provide Innerduct; the schedule in which the Make~~-~~Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Quitclaim(s), executed and acknowledged by U S WEST. Upon completion of the Quitclaim(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Quitclaim becomes effective to quitclaim the interest identified in the Quitclaim (if any) to the extent that U S WEST has the right to quitclaim such interest (if any)~~.~~. Such estimates shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2 ~~the General Information document and shall be completed within thirty-five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between U S WEST and CLEC identified in the Cost Quotation~~. The Attachment 2 quotation shall be valid for ninety (90) calendar days. ~~U S WEST will charge CLEC for field engineer time.~~[32]

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of U S WEST performing same) with the following stipulations: 1) Verifications will be conducted by a U S WEST approved contractor; 2) A U S WEST contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide U S WEST with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) U S WEST will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field

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[31] Colorado Workshop ~~June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (proposed)~~ (proposed 7/14/00)

[32] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)(except for interval) (includes Colorado Workshop language proposed 7/14/00)

report of available duct/innerduct. CLEC will be charged standard rates for Tactical Planner time.[33]

10.8.4.3 Order~~Order~~ – Poles, ~~and Innerduct~~ Ducts and ROW. ~~Upon completion of the procedures described above, U S WEST shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates.~~ The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated ~~lease~~recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy, except that, with respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply ~~strictly~~ with the process described in Exhibit D for ROW or other circumstances giving rise to such work beyond the simple preparation of one or more Quitclaims. Upon receipt of the accepted Order from CLEC and applicable payment for the ~~Make-Ready~~ fees identified, U S WEST will assign the ~~CLEC's~~ requested space and ~~complete the~~ commence any Make-Ready work which may be required. U S WEST will notify CLEC when Poles/Innerduct are ready ~~for attachment of facilities~~[34].

10.8.4.~~5~~4 Estimates of Make-Ready ~~in the Order~~ are used to cover actual Make-Ready costs.[35]

~~However, I~~if 10.8.4.4.1 If U S WEST requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed estimate~~.~~.[36]

10.8.4.4.2 Within fifteen (15) business days of a request therefor~~e~~, U S WEST will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if U S WEST does not possess all such records at the time of the request, then U S WEST will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) ~~thirty (30) calendar days of the completion of Make-Ready work.~~calendar days ~~following its receipt of an invoice~~after notification of the completion of Make-Ready work.[37]

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[33] Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)

[34] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[35] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

[36] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

[37] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within ~~thirty (30)~~sixty (60) calendar days ~~following receipt of invoice if CLEC~~ after notification of the completion of Make-Ready Work~~of the completion of Make-Ready work~~ if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of U S WEST's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event, later than ninety (90) days following the request for credit.[38]

10.8.4.4.4 If CLEC cancels or if, due to cirucmstances unforeseen during inquiry/verification, U S WEST denies the request for Poles, Ducts or ROW, upon CLEC request, U S WEST will ~~also~~ refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. ~~If U S WEST denies the Poles/Innerduct, ROW request, U S WEST shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and Upon CLEC request, U S WEST will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any., upon request.~~[39] Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or U S WEST's~~U. S WEST's~~ receipt of all records relating to the actual costs, whichever comes last, but in no event, later than ninety (90) days following the cancellation or denial.[40]

10.8.5 Billing

CLEC agrees to pay U S WEST Poles/Innerduct/ROW preparation charges in advance and usage fees ~~("Fees")~~ in advance as specified in ~~the Request and Order~~ (Attachments

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[38] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink- in WA to verify)

[39] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

[40] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

1.A, 1.B ~~-~~and ~~Attachment~~ 2 of Exhibit D~~the General Information Document~~).[41] Make-Ready ~~F~~fees will be computed in compliance with applicable local, state and federal guidelines. ~~Such~~Usage ~~F~~fees will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual ~~U~~usage ~~F~~fees will be assessed as of January 1 of each year. Semi-annual usage fees will be assessed as of January 1 and July 1 of each year. All fees~~SuchUsage Fees~~ shall be paid within thirty (30) days following receipt of invoices~~, therefore.~~[42] All ~~F~~fees are not refundable except as expressly provided herein.

~~**10.8.6 Maintenance and Repair**~~

~~In the event of any service outage affecting both U S WEST and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct~~.

~~10.9 Enhanced Extended Loop~~

~~10.9.1 Definition – Enhanced Extended Loop (EEL) is a service offered by U S WEST that allows CLEC to extend loops from the end user premise to a CLEC collocation in a different Wire Center. EEL consists of a combination of loop and interoffice facilities and may also include multiplexing or concentration capabilities. EEL transport and loop facilities may utilize DS0, DS1 or DS3 equivalent bandwidths.~~

~~10.9.1.1 By providing EEL, U S WEST does not waive its position that it is not required to provide other combinations of unbundled network elements under (CFR) 51.315.(c).~~

~~10.9.2 Terms and Conditions~~

~~10.9.2.1 CLEC must utilize EEL to provide a significant amount of local exchange service to each end user served.~~

~~10.9.2.2 EEL is only available to serve end user customers served out of the Wire Centers set out in 9.11.2.5.1.~~

~~10.9.2.3 One end of the interoffice facility must terminate at a CLEC Collocation in a Wire Center other than the Serving Wire Center of the loop.~~

~~10.9.2.4 EEL combinations may consist of loops and interoffice transport of the same bandwidth. When multiplexing is requested, EEL~~

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41 Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

42 Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

may consist of loops and interoffice transport of different bandwidths. CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.

10.9.2.5 When concentration capability is requested, CLEC will purchase the appropriate concentration equipment and provide it to U S WEST for installation in the Wire Center.

10.9.2.6 Installation intervals will be equivalent to the respective Private Line Transport Service. Intervals as identified in the FCC Tariff No. 5, Section 7.

10.9.2.7 Concentration capability installation intervals will be offered as an ICB.

10.9.2.8 EEL services will only be provided where existing facilities are available.

10.9.3 Rate Elements

10.9.3.1 EEL Link. The EEL Link is the loop connection between the end user premises and the serving Wire Center. EEL Link is available in DS0, DS1 and DS3 bandwidths. Recurring and non-recurring charges apply.

10.9.3.2 EEL Transport. EEL Transport consists of the interoffice facilities between U S WEST Wire Centers. EEL Transport is available in DS0, DS1 and DS3 bandwidths. Recurring and non-recurring charges apply.

10.9.3.3 EEL Multiplexing. EEL Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. EEL Multiplexing is ordered with EEL Transport. Recurring and non-recurring charges apply.

10.9.3.4 EEL DS0 Channel Card. EEL DS0 Channel Cards are required for each DS0 EEL Link connected to a 1/0 EEL Multiplexer. Channel Cards are available for analog Loop Start, Ground Start, Reverse Battery and No Signaling.

10.9.3.5 Concentration Capability. Concentration Capability rates will be provided as an ICB. Cost recovery includes, but is not limited to, space preparation and space lease, equipment installation, cabling and associated terminations and structure installation, personnel training (if required) and delivery of required power. Recurring and non-recurring charges apply.

10.9.3.6 Service Order Charge. A Service Order Charge is a non-recurring charge to cover service order processing for each service order

~~issued by the CLEC.~~

~~**10.9.4 Ordering**~~

~~10.9.4.1 CLEC will submit orders using the ASR process.~~

~~10.9.4.2 U S WEST will install the appropriate Channel Card based on the DS0 EEL Link ASR order and apply the charges.~~

~~10.9.4.3 Requests for Concentration will be submitted using the Virtual Collocation process. Virtual Collocation intervals will be adhered to.~~

~~10.9.4.4 One service order is required when CLEC orders a single bandwidth EEL from CLECs collocation to the end user location. EEL Transport and EEL Links must be ordered on separate orders when multiplexing or concentration is included as part of the EEL.~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

ERRATA TO QWEST'S POSITION REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AND PRIVATE RIGHT-OF-WAY AGREEMENTS AND QWEST'S REDACTION PRINCIPLES

Qwest Corporation, formerly U S WEST Communications, Inc., ("Qwest") submits this errata to Qwest's Position Regarding Access to Poles, Ducts, Conduits and Rights-of-Way and Private Right-of-Way Agreements and Qwest's Redaction Principles.

This errata has four attachments. First, Qwest is adding to its examples of proposed redactions by attaching copies of a template multiple dwelling unit ("MDU") agreement and an easement to demonstrate its proposed redactions. Where easements are publicly recorded, Qwest proposes no redactions. Where an easement or MDU agreement is not publicly recorded, Qwest proposes to redact monetary terms only.

Second, Qwest has made additional proposed modifications to Section 10.8 of the Colorado SGAT. These changes include the following: (1) defining "ownership or control" in Section 10.8.1.5; (2) revising the definition of ROW; (3) creating a new section (Section 10.8.1.4) to define CLEC duties to provide access to poles, ducts, and rights-of-way; (4) organizing and clarifying the relevant fees that apply to "inquiries," "field verification," "quitclaim preparation," and "make-ready" for poles, ducts, conduits, or rights-of-way in Section 10.8.3.1, 10.8.3.2, and 10.8.3.3; (5) adding proposed Section 10.8.3.6 to detail the quitclaim consideration; (6) revising Section 10.8.4.2, relating to field verification and quitclaim

preparation, to distinguish between requests for access to poles/ducts, on the one hand, and requests for access to rights-of-way, on the other; and (7) changes to fix typographical errors. Other changes to incorporate the quitclaim process Qwest has proposed are also marked in the proposed revisions to Section 10.8.

Third, Qwest has attached a revised Exhibit A that reflects fees that apply to the ROW quitclaim process Qwest has proposed. Fourth, Qwest attaches a revised Exhibit D to the SGAT that reflects the schedule agreed upon by workshop participants in Arizona, corrects typographical errors, and also incorporates the quitclaim process.

Respectfully submitted,

QWEST CORPORATION

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ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the above and foregoing **ERRATA TO QWEST'S POSITION REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AND PRIVATE RIGHTS-OF-WAY AGREEMENTS AND QWEST'S REDACTION PRINCIPLES** was hand delivered this 18th day of July, 2000, to the following:

Mr. Bruce N. Smith
Colorado Public Utilities Commission
Executive Secretary
1580 Logan St., Office Level 2
Denver, CO 80203

and a copy has been hand delivered on the following:

**Joseph Molloy
Colorado Public Utilities Commission
1580 Logan St., OL-2
Denver, CO 80203

**Mana Jennings-Fader
Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

and a copy was served electronically to each person on the e-mail distribution list for this docket.

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
6.0 Resale			
6.1 Wholesale Discount Rates			
6.1.1 Basic Exchange Residential Line Service/Low Income Telephone Assistance Programs	13%		
6.1.2 Basic Exchange Business Line Service/PBX/ISDN/ACS/Centrex Plus	15.7%		
6.1.3 Message Telecommunications Service (MTS), Wide Area Telecommunications Service (WATS), Optional Calling Plans	15%		
6.1.4 Listings, CO Features, Per activation basis services (e.g., Continuous Redial, Last Call Return, Call Trace) & Discounted Feature Packages	31.6%		
6.1.5 Private Line Transport Service	21.4%		
6.1.6 Public Access Line, Negotiated Contract Agreements, Promotional offerings of less than 90 days & Zone Charges	0%		
6.1.7 Special Promotions of more than 90 days, Market Trials of more than 90 days, Physically Impaired Service Programs, & Volume/Term Discount Plans	Discount depends on type of service offered		
6.1.8 Directory Assistance, Operator Services, & Miscellaneous services which do not fall within any of the preceding categories	16.8%		
6.2 Customer Transfer Charge (CTC)			
6.2.1 CTC for POTS Service			
Residence First Line (Mechanized)			$3.76
Residence Each Additional Line (Mechanized)			$2.28
Business First Line (Mechanized)			$7.92
Business Each Additional Line (Mechanized)			$5.05
Residence First Line (Manual)			$13.32
Residence Each Additional Line (Manual)			$7.50
Business First Line (Manual)			$13.17
Business Each Additional Line (Manual)			$7.42
6.2.2 CTC for Private Line Transport Services			
First Circuit			$45.08[1]
Additional Circuit, per circuit, same CSR			$31.19[1]
6.2.3 CTC for Advanced Communications Services, per circuit			$50.48[1]
7.0 Interconnection			
7.1 Entrance Facilities			
7.1.1 DS1		$78.12	$482.00
7.1.2 DS3		$314.67	$528.93
	Recurring Fixed	**Recurring Per Mile**	**Nonrecurring**
7.2 Direct Trunked Transport			
7.2.1 DS0			
DS0 Over 0 to 8 Miles	$16.45	$0.09	
DS0 Over 8 to 25 Miles	$16.45	$0.09	
DS0 Over 25 to 50 Miles	$16.45	$0.09	
DS0 Over 50 Miles	$16.45	$0.09	
7.2.2 DS1			
DS1 Over 0 to 8 Miles	$37.66	$0.68	
DS1 Over 8 to 25 Miles	$37.66	$0.65	
DS1 Over 25 to 50 Miles	$36.67	$1.05	
DS1 Over 50 Miles	$37.66	$0.74	

EXHIBIT A – COLORADO RATES*

			Recurring	Nonrecurring
7.2.3	DS3			
	DS3 Over 0 to 8 Miles	$256.13	$14.17	
	DS3 Over 8 to 25 Miles	$256.13	$13.96	
	DS3 Over 25 to 50 Miles	$256.13	$18.24	
	DS3 Over 50 Miles	$256.13	$19.10	
			Recurring	**Nonrecurring**
7.3 Multiplexing				
7.3.1	DS1 to DS0 per arrangement		$180.24	$289.36
7.3.2	DS3 to DS1 per arrangement		$180.64	$296.24
7.4 ITP				
7.4.1	DS0 ITP		$1.69	$283.05
7.4.2	DS1 ITP		$8.37	$321.21
7.4.3	DS3 ITP		$29.33	$322.86
7.5 Local Traffic				
7.5.1	End office call termination, per minute of use		$0.00283	
7.5.2	Tandem Switched Transport			
	7.5.2.1 Tandem Switching, per Minute of Use		$0.002007	
		Recurring Fixed	**Recurring Per Mile**	**Nonrecurring**
	7.5.2.2 Tandem Transmission			
	0 to 8 Miles	$0.000359	$0.000008	
	8 to 25 Miles	$0.000359	$0.000007	
	25 to 50 Miles	$0.000358	$0.000007	
	Over 50 Miles	$0.000357	$0.000008	
	7.5.2.3 Installation Options			
	Installation Charges DS0 Interface, First Trunk			Refer to Colorado Switched Access Tariff Section 6.8.1.D.4
	DS0 Interface, Each Additional Trunk			Refer to Colorado Switched Access Tariff 6.8.1.D.4
	Installation Charges DS1 Interface, First Trunk			Refer to Colorado Switched Access Tariff 6.8.1.D.4
	DS1 Interface, Each Additional Trunk			Refer to Colorado Switched Access Tariff 6.8.1.D.4
	DS3 Interface, First Trunk			Refer to Colorado Switched Access Tariff 6.8.1.D.4
	DS3 Interface, Each Additional Trunk			Refer to Colorado

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
			Switched Access Tariff 6.8.1.D.4
		Recurring	Nonrecurring
7.6 Miscellaneous Charges			
7.6.1 Expedite Charge (LIS Trunks)	U S WEST's Colorado Switched Access Tariff Section 5.2.2 and Nonrecurring Trunk Charges found at Section 7.5.2.3 of this Exhibit A		
7.6.2 Cancellation Charge (LIS Trunks)	U S WEST's Colorado Switched Access Tariff Section 5.2.3 and Nonrecurring Trunk Charges found at Section 7.5.2.3 of this Exhibit A		
7.6.3 Construction Charges		ICB	ICB
7.7 IntraLATA Toll Traffic	U S WEST's Colorado Switched Access Tariff		
7.8 Transit Traffic			
7.8.1 Local Transit	See Tandem Switching and Tandem Transmission Rates Above.		
Local Transit Assumed Mileage	9 Miles		
7.8.2 IntraLATA Toll	U S WEST's Colorado Switched Access Tariff		
IntraLATA Toll Assumed Mileage	9 Miles		
7.8.3 Jointly Provided Switched Access	U S WEST's Colorado Switched Access Tariff		
8.0 Collocation			
8.1 All Collocation			
8.1.1 Quote Preparation Fee			$2,111.27
8.1.2 Collocation Entrance Facility, per 2 fibers		$2.76	$3,028.97
8.1.3 Collocation Entrance Facility – Copper		ICB	ICB
8.1.4 Cable Splicing			
Fiber - Per set-up			$461.52
Per fiber spliced			$36.89
Per Copper Spliced			$91.27
8.1.5 -48 Volt DC Power Usage, per ampere, per month		$16.20	
8.1.6 -48 Volt DC Power Cable, per foot, per A&B feeder			
20 Amp Feed		$0.21	$68.26
40 Amp Feed		$0.28	$92.56
60 Amp Feed		$0.32	$104.24
100 Amp Feed		$0.25[1]	$142.99[1]
200 Amp Feed		$0.39[1]	$223.99[1]
300 Amp Feed		$0.50[1]	$309.35[1]
400 Amp Feed		$0.65[1]	$400.07[1]
8.1.7 AC Power Feed			
120 V, per amp, per month		$18.97[1]	
208 V, Single Phase, per amp, per month		$32.88[1]	
208 V, Three Phase, per amp, per month		$56.88[1]	
240 V, Single Phase, per amp, per month		$37.93[1]	
240 V, Three Phase, per amp, per month		$65.63[1]	
480 V, Three Phase, per amp, per month		$131.26[1]	

EXHIBIT A – COLORADO RATES*

			Recurring	Nonrecurring
	20 Amp, Single Phase, per foot, per month		$0.02[T]	$10.49[T]
	20 Amp, Three Phase, per foot, per month		$0.02[T]	$11.89[T]
	30 Amp, Single Phase, per foot, per month		$0.02[T]	$10.95[T]
	30 Amp, Three Phase, per foot, per month		$0.02[T]	$13.29[T]
	40 Amp, Single Phase, per foot, per month		$0.02[T]	$12.05[T]
	40 Amp, Three Phase, per foot, per month		$0.03[T]	$14.83[T]
	50 Amp, Single Phase, per foot, per month		$0.02[T]	$13.43[T]
	50 Amp, Three Phase, per foot, per month		$0.03[T]	$16.89[T]
	60 Amp, Single Phase, per foot, per month		$0.03[T]	$14.57[T]
	60 Amp, Three Phase, per foot, per month		$0.03[T]	$18.73[T]
	100 Amp, Single Phase, per foot, per month		$0.03[T]	$16.93[T]
	100 Amp, Three Phase, per foot, per month		$0.04[T]	$23.80[T]
8.1.8	Grounding			
	2/0 AWG – per foot		$0.1340[T]	$6.4060[T]
	1/0 AWG – per foot		$0.1979[T]	$9.4579[T]
	4/0 AWG – per foot		$0.2352[T]	$11.2429[T]
	350 kcmil – per foot		$0.3623[T]	$17.3178[T]
	500 kcmil – per foot		$0.4227[T]	$20.1969[T]
	750 kcmil – per foot		$0.5244[T]	$25.0626[T]
8.1.9	Inspector Labor, per half hour,			
	Regular Hours Rate			$26.91
	After Hours Rate			$34.97
8.1.10	Channel Regeneration			
	8.1.10.1 DS1 Regeneration		$13.03	$321.20
	8.1.10.2 DS3 Regeneration		$85.44	$322.86
8.1.11	Cable Racking, per foot, per termination			
	DS0 (2-wire)			$0.0146[T]
	DS0 (4-wire)			$0.0292[T]
	DS1			$0.0292[T]
	DS3			$0.6414[T]
8.1.12	Security, per employee, per C.O.		$7.78[T]	
8.1.13	Central Office Clock Synchronization			
	Synchronization – Composite Clock, per port		$8.19[T]	
8.2 Virtual Collocation				
8.2.1	Training Labor, per half hour			
	Regular Hours Rate			$23.84
	After Hours Rate			N/A
8.2.2	Maintenance Labor, per half hour			
	Regular Hours Rate			$23.84
	After Hours Rate			$31.71
8.2.3	Engineering Labor, per half hour			
	Regular Hours Rate			$23.25
	After Hours Rate			$31.11
8.2.4	Installation Labor, per half hour			
	Regular Hours Rate			$26.91
	After Hours Rate			$34.97

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
8.2.5 Equipment Bay -recurring, per shelf		$7.26	
8.3 Caged and Cageless Physical Collocation			
8.3.1 Space Construction			ICB
8.3.2 Site Preparation			ICB
8.3.3 Floor Space Lease, per square foot			
Zone 1		$2.75	
Zone 2		$2.26	
Zone 3		$2.06	
8.4 ICDF Collocation			
8.4.1 ICDF Frame, Block Terminations			
DS0		$1.33[1]	$743.75[1]
DS1		$1.83[1]	$569.97[1]
DS3		$1.04[1]	$324.05[1]
8.4.2 ICDF Frame, per Termination			
DS0		$0.0101[1]	$5.64[1]
DS1		$0.0212[1]	$13.35[1]
DS3		$0.6509[1]	$202.35[1]
9.0 Unbundled Network Elements (UNEs)			
9.1 Interconnection Tie Pairs (ITP) – Per Termination			
DS0 2-wire		$.84	$283.05
DS0 4-wire		$1.69	$283.05
DS1 Per each Termination		$8.37	$321.21
DS3 Per each Termination		$29.33	$322.86
9.2 Unbundled Loops			
9.2.1 Analog Loops			
9.2.1.1 2-Wire Voice Grade and 2-Wire Non-Loaded			
Base Rate Area		$19.65	
Zone 1		$26.65	
Zone 2		$38.65	
Zone 3		$84.65	
9.2.1.2 4-Wire Voice Grade and 4-Wire Non-Loaded			
Base Rate Area		$39.30	
Zone 1		$53.30	
Zone 2		$77.30	
Zone 3		$169.30	
9.2.2. Cable Unloading/Bridge Tap Removal			
First Splice Location			$85.00
Each Additional Splice Location			$50.00
9.2.3 Digital Capable Loops			
9.2.3.1 Basic Rate ISDN Capable Loop		$19.65	N/A
9.2.3.2 DS1 Capable Loop		ICB	ICB
9.2.3.3 Regeneration			
DS1		$13.03	$321.20
DS3		$85.44	$322.86
9.2.3.4 2-Wire Extension Technology		$20.13	
9.2.4 Loop Installation Charges			
9.2.4.1 Basic Installation			

EXHIBIT A – COLORADO RATES*

			Recurring	Nonrecurring
	First Loop			$70.00
	Each Additional Loop			$40.00
9.2.5	Coordinated Installation without Cooperative Testing			
	First Loop			$100.00[1]
	Each Additional Analog Loop			$70.00[1]
9.2.6	Basic Installation with Performance Testing			
	First Loop			$112.00
	Each Additional Loop			$60.00
9.2.7	Coordinated Installation with Cooperative Testing			
	First Loop			$142.00
	Each Additional Loop			$90.00
9.3	**Network Interface Device (NID)**			$44.00
		Recurring Fixed	**Recurring Per Mile**	**Nonrecurring**
9.4	**Unbundled Dedicated Interoffice Transport (UDIT)**			
9.4.1	DS0 UDIT			
	DS0 Over 0 to 8 Miles	$16.45[1]	$0.09[1]	
	DS0 Over 8 to 25 Miles	$16.45[1]	$0.09[1]	
	DS0 Over 25 to 50 Miles	$16.45[1]	$0.09[1]	
	DS0 Over 50 Miles	$16.45[1]	$0.09[1]	
9.4.2	DS1 UDIT			
	DS1 Over 0 to 8 Miles	$37.66[1]	$0.68[1]	
	DS1 Over 8 to 25 Miles	$37.66[1]	$0.65[1]	
	DS1 Over 25 to 50 Miles	$37.67[1]	$1.05[1]	
	DS1 Over 50 Miles	$37.66[1]	$0.74[1]	
9.4.3	DS3 UDIT			
	DS3 Over 0 to 8 Miles	$256.13[1]	$14.17[1]	
	DS3 Over 8 to 25 Miles	$256.13[1]	$13.96[1]	
	DS3 Over 25 to 50 Miles	$256.13[1]	$18.24[1]	
	DS3 Over 50 Miles	$256.13[1]	$19.10[1]	
9.4.4	OC-3 UDIT			$331.92[1]
	OC-3 Over 0 to 8 Miles	$836.42[1]	$217.83[1]	
	OC-3 Over 8 to 25 Miles	$843.46[1]	$66.15[1]	
	OC-3 Over 25 to 50 Miles	$805.40[1]	$83.00[1]	
	OC-3 Over 50 Miles	$835.59[1]	$56.94[1]	
9.4.5	OC-12 UDIT			$331.92[1]
	OC-12 Over 0 to 8 Miles	$1809.95[1]	$127.25[1]	
	OC-12 Over 8 to 25 Miles	$1761.00[1]	$140.17[1]	
	OC-12 Over 25 to 50 Miles	$2074.83[1]	$80.41[1]	
	OC-12 Over 50 Miles	$2031.69[1]	$86.44[1]	
			Recurring	**Nonrecurring**
9.4.6	DS0 UDIT Low Side Channelization		$5.96[1]	N/A
9.4.7	Multiplexing			
	DS3 to DS1		$180.64	$296.24
	DS1 to DS0		$180.24	$289.36

EXHIBIT A – COLORADO RATES*

			Recurring	Nonrecurring
	DS1/DS0 Low Side Channelization		$2.98	$231.47
9.4.8	Extended Unbundled Dedicated Interoffice Transport			
	DS1 E-UDIT		$57.21[1]	$448.36[1]
	DS3 E-UDIT		$280.97[1]	$448.36[1]
	OC-3 E-UDIT		$994.90[1]	$448.36[1]
	OC-12 E-UDIT		$1348.89[1]	$448.36[1]
9.5	**Shared Transport**			
Per Minute of Use			$0.016890[3]	
9.6	**Unbundled Customer Controlled Rearrangement Element (UCCRE)**			
9.6.1	DS1 Port		ICB	ICB
9.6.2	DS3 Port		ICB	ICB
9.6.3	Dial Up Access		ICB	ICB
9.6.4	Attendant Access		ICB	ICB
9.6.5	Virtual Ports		ICB	ICB
9.7	**Local Tandem Switching**			
9.7.1	DS1 Local Message Trunk Port			$337.96
9.7.2	Trunk Group – First Trunk			278.91
9.7.3	Message Trunk Group – Each Additional Trunk			$8.64
9.7.4	Per Minute of Use		$0.002007	
9.8	**Local Switching**			
9.8.1	Analog Line Side Port, First Port		$13.91[3]	$30.00
9.8.2	Each Additional Port (ordered concurrently with an unbundled loop)		$13.91[3]	$10.00
9.8.3	Vertical Features			
	Call Hold		$0.06[1]	
	Call Transfer		$0.19[1]	
	Three Way Calling		$0.09[1]	
	Call Pickup		$0.06[1]	
	Call Waiting/Cancel Call Waiting		$0.14[1]	
	Distinctive Ringing		$0.08[1]	
	Speed Call Long – Customer Change		$0.06[1]	
	Station Dial Conferencing (6-way)		$1.00[1]	
	Call Forwarding Busy Line		$0.13 [1]	
	Call Forwarding Don't Answer		$0.16[1]	
	Call Forwarding Variable		$0.14[1]	
	Call Forwarding Variable Remote		$0.12[1]	
	CLASS – Call Waiting ID		$0.05 [1]	
	CLASS – Calling Name & Number		$0.29[1]	
	CLASS – Calling Number Delivery		$0.08[1]	
	CLASS – Calling Number Delivery –Blocking		$0.38 [1]	
	CLASS – Continuous Redial		$0.79[1]	
	CLASS – Last Call Return		$0.38[1]	
	CLASS – Priority Calling		$1.09 [1]	
	CLASS – Selective Call Forwarding		$0.96 [1]	
	CLASS – Selective Call Rejection		$1.75 [1]	
	CLASS – Anonymous Call Rejection		$0.29 [1]	
	Call Park (Store & Retrieve)		$0.12 [1]	
	Message Waiting Indication A/V		$0.07[1]	
9.8.4	Subsequent Order Charge			$12.99

EXHIBIT A – COLORADO RATES*

			Recurring	Nonrecurring
9.8.5	Digital Line Side Port (Supporting BRI ISDN)		$17.13	
	9.8.5.1 Nonrecurring, First Port			$277.13
	9.8.5.2 Nonrecurring, Each Additional Port			$277.13
9.8.6	Digital Trunk Ports			
	9.8.6.1 DS1 Message Trunk Port (Supporting Local Message Traffic)			$337.96
	9.8.6.2 Message Trunk Group, First Trunk			$278.91
	9.8.6.3 Message Trunk Group, Each Additional			8.64
9.8.7	Local Usage, per Minute of Use		$0.00283	
9.9	**Customized Routing**			
	9.9.1 Development of Custom Line Class Code – Directory Assistance or Operator Services Routing Only		ICB	
	9.9.2 Installation Charge, per Switch – Directory Assistance or Operator Service Routing Only		ICB	
	9.9.3 All Other Custom Routing		ICB	
9.10	**Common Channel Signaling/SS7**			
9.10.1	CCSAC STP Port		$203.26[1]	$516.72[1]
9.10.2	CCSAC Options Activation Charge			
	9.10.2.1 Basic Translations			
	First Activation, per order			$121.86[1]
	Each Additional Activation, per			$10.10[1]
	9.10.2.2 CCSAC Options Database Translations			
	First Activation per order			$142.07[1]
	Each additional Activation per order			$60.63[1]
9.10.3	Signal Formulation, ISUP, Per Call Set-Up Request		$0.001970[1]	
9.10.4	Signal Transport, ISUP, Per Call Set-Up Request		$0.001499[1]	
9.10.5	Signal Transport, TCAP, per Data Request		$0.000496[1]	
9.10.6	Signal Switching, ISUP, Per Call Set-Up Request		$0.001470[1]	
9.10.7	Signal Switching, TCAP, Per Data Request		$0.000482[1]	
9.11	**Advanced Intelligent Network (AIN)**			
9.11.1	AIN Customized Services			ICB
9.11.2	AIN Platform Access		ICB	ICB
9.11.3	AIN Query Processing, per Query		ICB	
9.12	**Line Information Database (LIDB)**			
9.12.1	LIDB Storage			ICB
9.12.2	Line Validation Administration System Access (LVAS)			ICB
	9.12.2.1 LIDB Line Record Initial Load			ICB
	9.12.2.2 Mechanized Service Account Update, per Addition or Update Processed		ICB	
	9.12.2.3 Individual Line Record Audit			ICB
	9.12.2.4 Account Group Audit			ICB
	9.12.2.5 Expedited Request Charge for Manual Updates			ICB
9.12.3	LIDB Query Service, per Query		$0.003529[1]	
9.12.4	Fraud Alert Notification, per Alert		ICB	
9.13	**8XX Database Query Service**			
9.13.1	Basic Query, per Query		$0.0009492[1]	
9.13.2	POTS Translation		$0.00000143[1]	
9.13.3	Call Handling & Destination Feature		$0.0000429[1]	

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
9.14 ICNAM, Per Query		ICB[2]	
9.15 Construction Charges			ICB
9.16 Miscellaneous Elements			
Additional Engineering – Basic			$31.92[1]
Additional Engineering – Overtime			$41.20[1]
Additional Labor Installation – Overtime			$9.08[1]
Additional Labor Installation – Premium			$18.16[1]
Additional Labor Other – Basic			$27.86[1]
Additional Labor Other – Overtime			$37.29[1]
Additional Labor Other – Premium			$46.72[1]
Testing and Maintenance – Basic			$29.58[1]
Testing and Maintenance – Overtime			$39.58[1]
Testing and Maintenance – Premium			$49.59[1]
Maintenance of Service – Basic			$27.86[1]
Maintenance of Service – Overtime			$37.29[1]
Maintenance of Service – Premium			$46.72[1]
Additional COOP Acceptance Testing – Basic			$29.58[1]
Additional COOP Acceptance Testing – Overtime			$39.58[1]
Additional COOP Acceptance Testing – Premium			$49.59[1]
NonScheduled COOP Testing - Basic			$29.58[1]
NonScheduled COOP Testing – Overtime			$39.58[1]
NonScheduled COOP Testing – Premium			$49.59[1]
NonScheduled Manual Testing – Basic			$29.58[1]
NonScheduled Manual Testing – Overtime			$39.58[1]
NonScheduled Manual Testing – Premium			$49.59[1]
Cooperative Scheduled Testing – Loss			$0.09[1]
Cooperative Scheduled Testing – C-Message Noise			$0.09[1]
Cooperative Scheduled Testing – Balance			$0.34[1]
Cooperative Scheduled Testing – Gain Slope			$0.09[1]
Cooperative Scheduled Testing – C-Notched Noise			$0.09[1]
Manual Scheduled Testing – Loss			$0.18[1]
Manual Scheduled Testing – C-Message Noise			$0.18[1]
Manual Scheduled Testing – Balance			$0.67[1]
Manual Scheduled Testing – Gain Slope			$0.18[1]
Manual Scheduled Testing – C-Notched Noise			$0.18[1]
Additional Dispatch			$88.15[1]
Date Change			$13.63[1]
Design Change			$62.94[1]
Expedite Charge			ICB[2]
Cancellation Charge			ICB[2]
10.0 Ancillary Services			
10.1 Interim Number Portability			
10.1.1 Per Assigned NXX		$56.37	
10.1.2 Coordinated Out of Hours Cut – Non-Sunday/Holiday			$59.73 per hr. per person[1]
10.1.3 Coordinated Out of Hours Cut – Sunday/Holiday			73.74 per hr. per person[1]
10.2 Local Number Portability			
10.2.1 LNP Queries		See FCC Tariff No. 5	
10.3 911/E911		No charge	

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
10.4 White Pages Directory Listings, Facility Based Providers			
10.4.1 Primary Listing		No charge	
10.4.2 Premium/Privacy Listings		General Exchange Tariff Rate, less wholesale discount	
10.5 Directory Assistance, Facility Based Providers			
10.5.1 Local Directory Assistance, Per Call		$0.34	
10.5.2 National Directory Assistance, per Call		$0.385[1]	
10.5.3 Call Branding, Set- Up and Recording			$10,500[1]
10.5.3.1 Loading Brand /Per Switch			$175[1]
10.5.4. Call Completion Link, per call		$0.085[1]	
10.6 Directory Assistance List Information			
10.6.1 Initial Database Load or Database Reload, per Listing		$0.0075[1]	
10.6.2 Daily Updates, per Listing		$0.0181[1]	
10.6.3 One-time Set-Up Fee		$82.22[1]	
10.6.4 Media Charges for File Delivery			
10.6.4.1 Electronic Transmission, per listing		$0.0010[1]	
10.6.4.2 Tapes (charges only apply if this is selected as the normal delivery medium for daily updates)		$30.00[1]	
10.6.4.3 Shipping Charges (for tape delivery)		ICB	
10.7 Toll and Assistance Operator Services, Facility Based Providers,			
10.7.1 **Option A** – Per Message			
Operator Assistance, per Call		$0.36	
Operator Handled Calling Card		$0.46	
Machine Handled Calling Card		$0.18	
Station Call		$0.84	
Person Call		$2.05	
Connect to Directory Assistance		$0.55	
Busy Line Verify, per call		$0.72	
Busy Line Interrupt		$0.87	
10.7.2 **Option B** – Per Operator Work Second and Computer Handled Calls			
Operator Handled, per Operator Work Second		$0.0181	
Machine Handled, per Call		$0.13	
10.7.3 Call Branding, Set-Up & Recording			$10.500[1]
10.7.3.1 Loading Brand/Per Switch			$175[1]
10.8 Access to Poles, Ducts, Conduits and Rights of Way			
10.8.1 Pole Inquiry Fee, per Mile			$114.00[1]
10.8.2 Innerduct Inquiry Fee, per Mile			$171.00[1]
10.8.3 ROW Inquiry Fee			Under Development[A]
10.8.4 Field Verification Fee, Per Pole			$5.00[B]

[A] Colorado Workshop June 6-8, 2000 (proposed)
[B] Colorado Workshop June 6-8, 2000 (proposed)

EXHIBIT A – COLORADO RATES*

		Recurring	Nonrecurring
10.8.5	Field Verification Fee, per Manhole		$406.00[C]
10.8.6	~~Field Verification~~Quitclaim Preparation Fee, ~~per Mile of~~ ROW	]	Under Development[B]
10.8.7	Make-Ready Work, per Foot Innerduct	]	$3.00[D]
10.8.8	Pole Attachment Fee, per Pole, per Year	$2.82[E]	
10.8.9	Innerduct Occupancy Fee, per Foot per Year	$0.48[F]	
10.8.10	Quitclaim Consideration, ROW ~~Access Fee, per Mile, per Year~~		$10.00
12.0 Operational Support Systems			
12.1	Daily Usage Record File, per Record	$0.0011[1]	
12.2	Category 11 Mechanized Record Charge, per Record	$0.0025[1]	
17.0 Bona Fide Request Process			
17.1	Processing Fee		$2,128.00[1]

NOTES:

* Unless otherwise indicated, rates shown are those approved by the Commission in Docket 96A-331T.

[1] Rates not addressed in Colorado Cost Docket 96A-331T. TELRIC based where required.

[2] ICB Individual Case Basis pricing until cost study completed and approved.

[3] Rate proposed pending Final Decision of FCC Remand and the Eighth Circuit Court's review of FCC pricing rules.

[C] Colorado Workshop June 6-8, 2000 (proposed)
[B] Colorado Workshop June 6-8, 2000 (proposed)
[D] Colorado Workshop June 6-8, 2000 (proposed)
[E] Colorado Workshop June 6-8, 2000 (proposed)
[F] Colorado Workshop June 6-8, 2000 (proposed)

EXHIBIT D

Date General Information Provided by ~~USW:~~Qwest: _____
General Agreement Number : _____
BAN Number(must be assigned before processing): _____

~~REVISED U S WEST POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY~~
REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE ~~7~~3/13~~7~~/00

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain ~~Co-Provider~~CLEC's facilities ("Facilities") to ~~U S WEST Communications, Inc.'s ("USW") Poles or~~Qwest Corporation's ("Qwest") Poles, to place Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to ~~"Poles/Innerduct").~~Qwest's private right of way ("ROW"), to the extent Qwest as the right to grant such access. This General Information is necessary to determine if ~~USW~~Qwest can meet the needs of the ~~Co-Provider~~CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-~~first~~-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.

2. **PROCESS**. The ~~USW~~Qwest process is designed to provide the ~~Co-Provider~~CLEC the information so as to assist ~~Co-Provider~~CLEC and ~~USW to make Poles and~~Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

   2.1 Inquiry Review - Attachment 1.A (Database Search). The ~~Co-Provider~~CLEC is requested to review this document and return ~~Form~~ Attachment 1.A along with two copies of a map and the nonrefundable Inquiry ~~Preparation~~ Fee, calculated in~~the amount of One Hundred Fourteen Dollars ($114.00) per mile (with a One Hundred Fourteen Dollar minimum) for Pole Review, or the Innerduct Review Fee in the amount of One Hundred Seventy One Dollars ($171.00) per mile (with a One Hundred Seventy One Dollar minimum).~~accordance with Attachment 1.A hereto. These fees are intended to cover ~~USW's~~Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey,~~public record review~~, setting up an account, and determining time frames for completion of each task to meet the ~~Co-Provider~~CLEC's Request. Please be sure a BAN number is assigned by the Product Manager (call 303-896-0789) before sending ~~form~~ Attachment 1.A.
   As indicated on ~~Form~~ Attachment 1.~~-~~A, a copy of the signed ~~form~~ Attachment and maps of the desired route should be sent to the Product Manager while the fee should be sent to the ~~U S WEST~~Qwest CLEC Joint Use Manager with the original signed ~~form~~ Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be ~~equal to the best street maps available~~legible and identify all significant geographic characteristics including, but not limited to, the following: ~~U S WEST~~Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. ~~should be identified where possible. Faxes are not acceptable~~ Qwest reserves the right to reject illegible or incomplete maps. If ~~Co-Provider~~CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps.
   ~~USW~~Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Quitclaim Preparation Costs Quotation~~Innerduct Permit Processing Costs Quotation~~ (Attachment 1.B) to the ~~Co-Provider~~CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, ~~USW~~Qwest will assign a Field Engineer and provide his/her name and phone number to the ~~Co-Provider~~CLEC. The Field engineer will check the local database and be available for a

joint verification with the ~~Co-Provider~~CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of ~~USW~~Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix, within ten (10) days, which will identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., easement, license, etc.). The ROW information matrix will also indicated whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and ~~Co-Provider~~CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 ~~2.2 Request~~ Attachment 1.B (Verification) & Attachment 4 (Quitclaim Preparation). ~~Upon~~With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the ~~Co-Provider~~CLEC, ~~USW~~Qwest will conduct facilities verification and provide the requested information which may or may not include the following:a review of public and/or internal ~~USW~~ Qwest right-of-ways records for restrictions,; identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the ~~Co-Provider~~CLEC, if applicable, prior to installing its facilities. In the case of Poles, ~~form~~ Attachment 1.B orders the field verification which may be done jointly. ~~Such work shall be completed within thirty-five (35) days for a standard inquiry of one hundred (100) poles (or fewer), or thirty (30) Utility Hole sections (or fewer), or as negotiated between USW~~Qwest ~~and Co-Provider~~CLEC ~~and identified in Attachment 1.B.~~ A copy of the signed ~~Form~~ Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the ~~USW-CLEC~~Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B ~~form~~. Upon completion of the verification, Attachment 2 will be sent to the ~~Co-Provider~~CLEC by ~~USW~~Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the ~~Co-Provider~~CLEC ~~and USW~~ acknowledged Quitclaim of Right of Access Agreement to the ~~Co-Provider~~CLEC in the form attached hereto as Attachment 4 (the "Quitclaim"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the Quitclaim, will be attached to the Quitclaim and provided to the ~~Co-Provider~~CLEC at the time of delivery ~~to the Co-Provider~~CLEC of the Quitclaim. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Easement Agreement in its possession, the Quitclaim will not have a copy of the Easement Agreement attached.

Verification/Quitclaim Preparation work shall be completed within the time frames designated in the table below:

SIZE OF VERIFICATION REQUEST	TIME LIMIT (DAYS)
Less than or equal to 100 poles or 30 manholes or 2 miles of linear ROW	35
~~Less~~ than or equal to 200 poles or 60 manholes or 4 miles of linear ROW	50

Less than or equal to 300 poles or 90 manholes or 6 miles of linear ROW	65
Less than or equal to 400 poles or 120 manholes or 8 miles of linear ROW	80
Less than or equal to 500 poles or 150 manholes or 10 miles of linear ROW	95
Greater than 500 poles or 150 manholes or 10 miles of linear ROW	As Negotiated Between U S WEST and CLEC

In the case of ROW, after Qwest has delivered the Quitclaim, the ~~Co-Provider~~CLEC will be required to obtain the property owner's notarized signature on the Consent that is a part of the Quitclaim. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the ~~Co-Provider~~CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the ~~Co-Provider~~CLEC to obtain a copy of the Easement Agreement. After the ~~Co-Provider~~CLEC has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the ~~Co-Provider~~CLEC must record the Quitclaim (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) ~~Co-Provider~~CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, (ii) upon receipt of such Consent, Qwest will provide the ~~Co-Provider~~CLEC with a copy of the Easement Agreement with the monetary terms redacted, and (iii) the ~~Co-Provider~~CLEC must then record the Quitclaim, together with the Consent and the Easement Agreement, in the real property records for the county in which the property is located; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession, the ~~Co-Provider~~CLEC (i) must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the quitclaim, and (ii) must record the Quitclaim (with the Consent and the Easement Agreement or other documentation attached) in the real property records of the county in which the property is located. In any case, recordation of the properly completed, executed and acknowledged Quitclaim gives effect to Qwest's quitclaim of access to Qwest's ROW.

2.3 ~~2.3~~ Poles/Duct Order Attachment 2 (Access). ~~Upon~~In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, ~~USW~~Qwest will provide the ~~Co-Provider~~CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the ~~Co-Provider~~CLEC and applicable payment for the Make-Ready Fees identified, ~~USW~~Qwest will assign the ~~Co-Provider~~CLEC's requested space; Qwest will also , commence , the Make-ready work within 30 days following payment of the Make-Ready Fees ~~which may be required~~. ~~USW~~Qwest will notify ~~Co-Provider~~CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by ~~USW~~Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked".

~~USW~~Qwest will repair or clear damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The ~~Co-Provider~~CLEC may contract separately with a ~~USW-approved~~Qwest-approved contractor to complete the construction provided a ~~USW~~Qwest inspector inspects the work during and after construction. Construction attaching to or entering ~~USW-owned~~Qwest-owned structure must conform to ~~USW~~Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The ~~Co-Provider~~CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ~~Poles/Innerduct. USW~~ROW/Poles/Innerduct. Qwest agrees to issue to ~~Co-Provider~~CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing ~~Co-Provider~~CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned ~~in whole or in part~~ or controlled by ~~USW. USW~~Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to ~~Co-Co-Provider~~CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the ~~Co-Provider~~CLEC.

The costs included in the Poles/Innerduct ~~Permit Processing Costs Quotation~~Verification Fee are used to cover the costs incurred by ~~USW~~Qwest in determining if Poles/Innerduct space is available to meet the ~~Co-Provider~~CLEC's request; however, the ~~Co-Provider~~CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If ~~USW~~Qwest denies access ~~to the Poles/Innerduct Request, or section thereof~~, ~~USW~~Qwest shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Quitclaim. In the event that complications arise with respect to preparing the Quitclaim or any other aspect of ~~granting~~quitclaiming access to Qwest's ROW, the ~~Co-Provider~~CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.~~,~~

3. DISPUTE RESOLUTION

~~a~~3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of

qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

~~B~~3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

~~C~~3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

~~D~~3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A

General Agreement No._____
BAN Number (must be assigned before processing):_____
Poles/Innerduct/ROW Inquiry Preparation Fee

Date Submitted:_____ Date Replied to ~~Co-Provider~~CLEC: _____

_____

~~Co-Provider~~CLEC Name: _____

Contact name:_____
Address: _____
Phone Number:_____
e-mail address:_____
State or location of inquiry:_____

Poles/Innerduct Permit Database Search Costs Quotation
(One Mile Minimum)

	Costs	Est. Miles	Total
1. Pole ~~Database & Field Engineer i~~Inquiry Fee	~~$ 114.00 per mile~~	see attached pricing chart	$_____
2. Innerduct ~~Database i~~Inquiry Fee $_____	~~$ 171.00 per mile~~	see attached pricing chart	_____
3. ROW Records iInquiry $_____	~~$ 171.00 per mile~~	see attached pricing chart	_____

4. Estimated Interval for Completion of Items ~~1 or 2~~1, 2 and/or 3: 10 Days

~~4~~5. Additional requirements of ~~Co-Provider~~CLEC: _____

This Inquiry will result in (a) in the case of Poles and Innerduct, a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary Quitclaims. In the case of Poles, the name and telephone number of the Field Engineer will be provided so that the ~~Co-Provider~~CLEC may contact the ~~USW~~Qwest Field engineer and discuss attachment plans. If a field verification of the poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW~~Qwest offers such Poles/Innerduct.

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature

		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount ($114 per mile or $171 per mile) to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112
303-792-6990

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202 303-896-0789

ATTACHMENT 1.B

General Agreement No._____
BAN Number:_____

Poles/Innerduct Verification/ROW Quitclaim Preparation Costs Quotation

Date Nonrefundable Received: Date Replied to ~~Co-Provider~~CLEC: _____

_____

NOTE: THIS ATTACHMENT WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO THE ~~CO-PROVIDER~~CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.

Estimated Costs ~~_____~~Number_____ Total Charge

1. Pole Field ~~Survey~~ Verification Fee (10 pole minimum) see attached pricing chart
   $ ~~ICB per pole~~

2. Innerduct Field ~~Survey~~Verification Fee see attached pricing chart
   $ ~~ICB per Manhole~~

3. Quitclaim Preparation and Consideration $ per Quitclaim
   $ ~~$171 per Quitclaim~~

~~3.~~4. Estimated Interval for Completion of Items ~~1 or 2~~:1, 2 and/or 3: _____ Working Days

5. Additional requirements of ~~Co-Provider~~CLEC: _____

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the processing of its field survey/preparation of Quitclaims, and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW offers such Poles/Innerduct. The Co-~~Qwest offers such ROW/Poles/Innerduct. The ~~Co-Provider~~CLEC acknowledges the above costs are estimates only and ~~Co-Provider~~CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title

Date		Date

A copy of this form signed form should be sent to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202

The original signed form should be sent with a check for the verification amount to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

1. SCHEDULE A—PRICING CHART

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

nquiry and Verification, Poles and Ducts

STATE	POLE/ROW INQUIRY per mile***	DUCT INQUIRY per mile***	POLE VERIFICATION per pole***	DUCT VERIFICATION per manhole***
AZ	$	$	$	$
CO	$	$	$	$
ID	$	$	$	$
IA	$	$	$	$
MN	$	$	$	$
MT	$	$	$	$
NE	$	$	$	$
NM	$	$	$	$
ND	$	$	$	$
OR*	$	$	$	$
SD	$	$	$	$
UT	$	$	$	$
WA*	$	$	$	$
WY	$	$	$	$

***** Qwest is currently recalculating costs for all states. Figures for all states will be provided when they are available.**

* ordered rates by the state commission.

Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be $200.00 per pole or innerduct segment etween manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3.

ATTACHMENT 2

Poles/Innerduct Order General Agreement No_____
BAN Number:_____

NOTE: THIS FORM WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO ~~CO-PROVIDER~~CLEC FOR SIGNATURE

Make-ready Work required: Yes ( ) No ( ) Date Received:_____

If Yes is checked, estimated Make-ready costs: $ _____
Note: Make-Ready charges do not include construction work to enhance infrastructure

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - _____.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, ~~Co-Provider~~CLEC must:
   a. provide ~~USW~~Qwest representative, a final design showing splice, racking and slack locations in ~~USW~~Qwest utility holes.
   b. tag all equipment located in/on ~~USW's~~Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) ~~Co-Provider~~CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. ~~Per~~ Pole ~~Attached~~Attachment, Per ~~Foot~~ Pole	$ _____/~~Foot~~	_____	$_____
2. ~~Per~~ Innerduct Occupancy, Per Foot	$ _____/~~Foot~~	_____	$_____
Total Annual Recurring Charges			$_____

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you choose not to place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO_____ (/DAY * DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER_____

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under

which ~~USW~~Qwest offers such Poles/Innerduct. By signing this document you are ~~leasing the available space~~agreeing to the access described herein.

Return this signed form and check to: Pam ~~Fisher, U S WEST~~Fisher, **Qwest CLEC Joint Use, Suite 101, 912 S. Quentin, Englewood, CO 80112**

Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

~~U S WEST~~Qwest Field Engineer: _____

Phone Number: _____

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

ATTACHMENT 3

General Agreement No._____

~~U S WEST POLE AND~~QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY
GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ ("~~Co-Provider~~CLEC") and **~~U S WEST Communications, Inc.~~** ("~~USW~~"),Qwest Corporation ("Qwest"), for one or more Orders for the ~~Co-Provider~~CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to ~~USW's~~Qwest's Poles and/or placement of Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and ~~Co-Provider~~CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

1.1 Subject to the provisions of this Agreement, ~~USW~~Qwest agrees to issue to ~~Co-Provider~~CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing ~~Co-Provider~~CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned ~~in whole or in part~~or controlled by ~~USW~~.Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the ~~Co-Provider~~CLEC. Any and all rights granted to ~~Co-Provider~~CLEC shall be subject to and subordinate to any future local, state and/or federal ~~requirements.~~ requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.

1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by ~~Co-Provider~~CLEC or to obtain any ROW for ~~Co-Provider~~CLEC's use.

1.3 ~~USW~~Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. TERM. Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Quitclaim (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time ~~Co-Provider~~CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

3.1 ~~Co-Provider~~CLECTo the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any

individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to ~~USW~~the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.

3.3 If ~~USW~~Qwest terminates this Agreement for Cause, or if ~~Co-Provider~~CLEC terminates this Agreement without Cause, ~~Co-Provider~~CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause ~~USW~~Qwest to remove its Facilities from the Poles/Innerduct at ~~Co-Provider~~CLEC's expense; provided, however, that ~~Co-Provider~~CLEC shall be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until ~~Co-Provider~~CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

3.4 If this Agreement or any Order is terminated for reasons other than Cause, then ~~Co-Provider~~CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that ~~Co-Provider~~CLEC ~~shall~~Co-Provider~~CLEC shall~~ be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until ~~Co-Provider~~CLEC's Facilities are physically removed.

3.5 ~~USW~~Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the ~~Co-Provider~~CLEC. ~~—~~Upon abandonment of Poles/Innerduct, and with the concurrence of the other ~~Co-Provider~~CLEC(s), if necessary, ~~Co-Provider~~CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from ~~USW~~Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. CHARGES AND BILLING.

4.1. ~~Co-Provider~~CLEC agrees to pay ~~USW~~Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. ~~Co-Provider~~CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. ~~USW~~Qwest has the right to revise Fees, at its sole discretion, upon written notice to ~~Co-Provider~~CLEC within at least sixty (60) days prior to the end of any annual billing period.

5. INSURANCE. The ~~Co-Provider~~CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and

(3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars ($100,000.00) for each accident.

5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the ~~Co-Provider~~CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4 ~~USW~~Qwest may require the ~~Co-Provider~~CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by ~~USW~~Qwest shall be borne by ~~USW, and the Co-Provider~~CLEC Qwest, and the ~~Co-Provider~~CLEC shall arrange to have such costs billed separately and directly to ~~USW~~Qwest by the insuring carrier(s). ~~USW~~Qwest shall be authorized by the ~~Co-Provider~~CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the ~~Co-Provider~~CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a hole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by ~~USW,~~Qwest. The ~~Co-Provider~~CLEC shall forward to ~~USW,~~Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) ~~USW~~Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to ~~USW;~~Qwest; (3) certification that underground hazard overage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The ~~Co-Provider~~CLEC shall not commence work hereunder until the obligations of the ~~Co-Provider~~CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the ~~Co-Provider~~CLEC of any liability hereunder or in any way modify the ~~Co-Provider~~CLEC's obligations to indemnify ~~USW,~~Qwest.

5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage

to property with an aggregate limit of Six Million Dollars ($6,000,000.00). In addition, said policy shall name ~~USW~~Qwest and the ~~Co-Provider~~CLEC/Sub~~Co-Provider~~CLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the ~~USW~~Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

6.1 ~~USW~~Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a ~~USW~~Qwest spare conduit include the placement of innerduct, ~~USW~~Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event ~~USW~~Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before ~~Co-Provider~~CLEC's Facilities can be accommodated, the cost of such modification will be included in the ~~Co-Provider~~CLEC's nonrecurring charges for the associated Poles/Innerduct Order.

6.2 ~~Co-Provider~~CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and ~~USW~~Qwest does not warrant or represent that providing ~~Co-Provider~~CLEC with access to the Poles/Innerduct in any way constitutes such legal right. ~~-~~The ~~Co-Provider~~CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the ~~Co-Provider~~CLEC's sole expense, in order to perform its obligations under this Agreement. The ~~Co-Provider~~CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide ~~USW~~Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The ~~Co-Provider~~CLEC shall comply with all conditions of rights-of-way and Orders.

6.3 ~~Co-Provider~~CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. ~~USW's~~Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate ~~USW~~Qwest premises. ~~Co-Provider~~CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to ~~USW~~Qwest upon written request. ~~Co-Provider~~CLEC shall within thirty (30) days comply and provide the requested information to ~~USW~~Qwest to bring their facilities into compliance with these terms and conditions.

6.4. In the event of any service outage affecting both ~~USW~~Qwest and ~~Co-Provider~~CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.

6.5 In the event of an infrastructure outage, the ~~Co-Provider~~CLEC should contact their Network Maintenance Center~~at~~ ~~1-800-223-7881~~at 1-800-223-7881 or the ~~Co-Provider~~CLEC may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

7.1. If ~~Co-Provider~~CLEC requests ~~USW~~Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the ~~Co-Provider~~CLEC and ~~USW~~Qwest determines in its sole discretion to provide the requested capacity, the ~~Co-Provider~~CLEC shall pay ~~USW~~Qwest the total replacement cost, ~~USW's~~Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in ~~USW~~Qwest. To the extent that a modification is incurred for the benefit of multiple parties, ~~Co-Provider~~CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and ~~Co-Provider~~CLEC shall be responsible for its pro rata share of the modification cost. Except as set forth herein, ~~Co-Provider~~CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of ~~USW~~Qwest shall be provided to ~~Co-Provider~~CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If ~~Co-Provider~~CLEC does not rearrange its facilitates within sixty (60) days after receipt of written notice from ~~USW~~Qwest requesting such rearrangement, ~~USW~~Qwest may perform or cause to have performed such rearrangement and ~~Co-Provider~~CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. INSPECTION OF FACILITIES.

~~USW~~Qwest reserves the right to make final construction, subsequent and periodic inspections of ~~Co-Provider~~CLEC's facilities occupying the Poles/Innerduct system. ~~Co-Provider~~CLEC shall reimburse ~~USW~~Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. ~~Co-Provider~~CLEC shall provide written notice to ~~USW~~Qwest, at least fifteen (15) days in advance, of the locations where ~~Co-Provider~~CLEC's plant is to be constructed.

8.2. The ~~Co-Provider~~CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to ~~USW~~Qwest within five (5) business days of the date(s) of the occupancy.

8.3. ~~USW~~Qwest shall provide written notification to ~~Co-Provider~~CLEC within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by ~~USW~~Qwest has been completed, ~~Co-Provider~~CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from ~~USW~~Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether ~~Co-Provider~~CLEC has energized the facilities occupying said Poles/Innerduct system, unless ~~USW~~Qwest has provided ~~Co-Provider~~CLEC a written extension to comply. ~~Co-Provider~~CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to ~~Co-Provider~~CLEC until such non-complying conditions are corrected or until ~~Co-Provider~~CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, ~~USW~~Qwest shall perform such corrections and ~~Co-Provider~~CLEC shall pay ~~USW~~Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken my be made by ~~USW~~Qwest.

8.5. Once the ~~Co-Provider~~CLECs facilities occupy ~~USW~~Qwest Poles/Innerduct system and Exhibit A has been received by ~~USW~~, ~~USW~~Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by ~~USW~~Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that ~~Co-Provider~~CLEC has failed to comply with the provisions set forth in this Agreement, in which case the ~~Co-Provider~~CLEC shall reimburse ~~USW~~Qwest for full costs of inspection, and re-inspection to determine compliance as required. A ~~Co-Provider~~CLEC representative may accompany ~~USW~~Qwest on field inspections scheduled specifically for the purpose of inspecting ~~Co-Provider~~CLEC's Facilities; however, ~~Co-Provider~~CLEC's costs associated with its participation in such inspections shall be borne by ~~Co-Provider~~CLEC. ~~USW~~Qwest shall have no obligation to notify ~~Co-Provider~~CLEC, and ~~Co-Provider~~CLEC shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the ~~Co-Provider~~CLEC within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon ~~USW~~Qwest, and shall not relieve ~~Co-Provider~~CLEC of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITITES

9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USW, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars ($200.00) per attachment per Pole or innerduct run between manholes, and require the ~~Co-Provider~~CLEC to submit in writing, within ten (10) day after receipt of written notification from USW of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USW within the specified time period, the ~~Co-Provider~~CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USW may remove the ~~Co-Provider~~CLEC's facilities without liability, and the cost of such removal shall be borne by the ~~Co-Provider~~CLEC.

9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith

whether or not ~~Co-Provider~~CLEC is ordered to continue the occupancy of the Poles/Innerduct system.

9.3. No act or failure to act by ~~USW~~Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by ~~USW~~Qwest of any of its rights of privileges under this Agreement or otherwise.

10. REMOVAL OF FACILITIES. Should ~~USW,~~Qwest, under the provisions of this Agreement, remove ~~Co-Provider~~CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), ~~USW~~Qwest will deliver the Facilities removed upon payment by ~~Co-Provider~~CLEC of the cost of removal, storage and delivery, and all other amounts due ~~USW~~Qwest. If payment is not received by ~~USW~~Qwest within thirty (30) days, ~~Co-Provider~~CLEC will be deemed to have abandoned such facilities, and ~~USW~~Qwest may dispose of said facilities as it determines to be appropriate. If ~~USW~~Qwest must dispose of said facilities, such action will not relieve ~~Co-Provider~~CLEC of any other financial responsibility associated with such removal as provided herein. If ~~Co-Provider~~CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the ~~Co-Provider~~CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to ~~USW~~Qwest for previous occupancy have been paid in full. ~~Co-Provider~~CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by ~~Co-Provider~~CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by ~~Co-Provider~~CLEC," each as attached hereto, advising ~~USW~~Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

11. INDEMNIFICATION AND LIMITATION OF LIABILITIES. ~~Co-Provider~~CLEC shall indemnify and hold harmless ~~USW,~~Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the ~~Co-Provider~~CLEC; (2) actual or alleged fault or negligence of the ~~Co-Provider~~CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by ~~Co-Provider~~CLEC under this Contract or any product liability claims relating to any material supplied by ~~Co-Provider~~CLEC under this Contract; (4) failure of ~~Co-Provider~~CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by ~~Co-Provider~~CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of ~~USW,~~Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the ~~USW~~Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the ~~Co-Provider~~CLEC. If both ~~USW~~Qwest and the ~~Co-Provider~~CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the ~~Co-Provider~~CLEC, if ~~USW~~Qwest desires. ~~USW~~Qwest shall give the ~~Co-Provider~~CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the ~~Co-Provider~~CLEC's request and at the ~~Co-Provider~~CLEC's expense all information and assistance available to the ~~USW~~Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE ~~CO-PROVIDER~~CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST ~~USW~~QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE ~~CO-PROVIDER~~CLEC, AND THE ~~CO-PROVIDER~~CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF ~~USW~~QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF ~~USW~~QWEST WHEN CONCURRENT WITH THAT OF THE ~~CO-PROVIDER~~CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. FORCE MAJEURE

12.1 The ~~Co-Provider~~CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the ~~Co-Provider~~CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, ~~USW~~Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the ~~Co-Provider~~CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the ~~Co-Provider~~CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 ~~USW~~Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by ~~USW~~Qwest after the contingency occurs. With respect to ~~USW's~~Qwest's election of Section 12.2.3 above:

12.3.1 ~~USW~~Qwest shall give the ~~Co-Provider~~CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the ~~Co-Provider~~CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The ~~Co-Provider~~CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the ~~USW's~~Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 ~~USW~~Qwest shall be excused from its performance if prevented by acts or events beyond the ~~USW's~~Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The ~~Co-Provider~~CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to

Qwest's pole pursuant to the terms thereof. The ~~Co-Provider~~CLEC acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which ~~Co-Provider~~CLEC shall remain fully liable.

15. **SEVERABILITY**. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16. **GENERAL PROVISIONS**.

16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

16.2 This Agreement shall not be assignable by ~~Co-Provider~~CLEC without the express written consent of ~~USW~~Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by ~~Co-Provider~~CLEC to ~~Co-Provider~~CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that ~~Co-Provider~~CLEC must obtain ~~USW's~~Qwest's consent in any event.

16.3 This Agreement benefits ~~Co-Provider~~CLEC and ~~USW~~Qwest. There are no third party beneficiaries.

16.4 This Agreement constitutes the entire understanding between ~~Co-Provider~~CLEC and ~~USW~~Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

~~Co-Provider~~CLEC Corporation	~~U S WEST Communications, Inc.~~Qwest
_____	_____
Signature	Signature
_____	JOHN CARVETH
Name Typed or Printed	Name Typed or Printed
_____	PRODUCT MANAGER
Title	Title
_____	_____
Date	Date
~~Address for Notices~~	~~Address for Notices~~ ~~U S WEST Communications, Inc.~~

~~1801 California, Rm. 2330~~ ~~Denver, CO 80202~~ ~~Contact:~~ ~~Phone:~~ ~~FAX:~~	~~Contact: JOHN CARVETH~~ ~~Phone: 303-896-0789~~ ~~FAX: 303-896-9022~~	
Address for Notices Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202 Contact: Phone: FAX:	Address for Notices Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202 Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022	

EXHIBIT A

PULLING IN REPORT

_____ 2019__

~~U S WEST Communications, Inc.~~Qwest Corporation

_____

_____

This is to advise you that pursuant to General Agreement No. _____ granted to us under the terms of the Innerduct Agreement dated _____, ~~1999~~20__ we have completed installation of the following cable into the following ducts.

Municipality

Location

From Manhole at	To Manhole at	Cable and Equipment Installed	Date

_____

Name of ~~Co-Provider~~CLEC

By:_____
Title:_____

Receipt of the above report is hereby acknowledged_____, ~~19~~20__.

~~U S WEST Communications,~~

~~Inc.~~Qwest Corporation

By:_____
Title:_____

1. Reports shall be submitted in duplicate.

2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ___, unless a change has been previously authorized in writing by Licensor.

~~Co-Provider~~CLEC:_____

NOTIFICATION OF SURRENDER OR MODIFICATION
OF CONDUIT OCCUPANCY ORDER BY ~~CO-PROVIDER~~CLEC

Street Address _____
City and State_____
Date_____

~~U S WEST, Inc.~~Qwest Corporation

In accordance with the terms and conditions of this Agreement between us, dated _____, ~~19~~20__ _____, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated _____ _____, ~~19~~20__) effective _____.

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED

_____
Name of Licensor

_____
Name of Co- Provider

_____
Date Notification Received

By_____

_____
Date Modification Accepted

Title_____

By _____

Discontinued:

Total duct footage_____

~~Co-Provider~~CLEC

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY ~~CO-PROVIDER~~CLEC

Street Address_____
City and State_____
Date_____

~~U S WEST, Inc.~~Qwest Corporation
In accordance with the terms and conditions of the Agreement between ~~USW~~Qwest and ~~Co-Provider~~CLEC, dated _____,
~~19~~20__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in ~~Co-Provider~~CLEC's prior notification to ~~USW~~Qwest.
dated _____, ~~19~~20__) effective _____.

	POLE NO.	ASSOC.POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC.RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			
10.		A A/GS -			
11.		A A/GS -			
12.		A A/GS -			
13.		A A/GS -			

Date Notification Received _____
Date Modification Received_____
By:_____

_____
Name of ~~Co-Provider~~CLEC

iscontinued:

_____

By:_____

Poles_____
Anchors_____
Anchor/Guy Strands_____

Its:_____

ATTACHMENT 4
FORM OF QUITCLAIM RIGHT OF ACCESS AGREEMENT

After recording, please return to:

Qwest Corporation
1801 California Street
Suite 2330
Denver, Colorado 80202

Attention: Structure Project Manager

QUITCLAIM RIGHT OF ACCESS AGREEMENT

THIS QUITCLAIM RIGHT OF ACCESS AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address is _____, and _____, a _____, whose address is _____ ("Grantee").

RECITALS

A. This Agreement relates to certain real property (the "Property") located in the County of _____ (the "County"), State of _____ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to quitclaim to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such quitclaim conveyance.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby quitclaims to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights quitclaimed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Consent by Owner. Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. Recordation of Agreement. Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with

the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the

legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by:

QWEST CORPORATION, a Colorado corporation, successor in interest to U S WEST COMMUNICATIONS, INC., a Colorado corporation

By:
Name:
Title:

STATE OF)
) ss:
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of QWEST CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(SEAL)

Notary Public
My Commission Expires:

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____, a _____

By: _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2000, by _____, as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:
_____

CONSENT TO QUITCLAIM RIGHT OF ACCESS AGREEMENT

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the foregoing Quitclaim Right of Access Agreement (the "Agreement"), as required therein. This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee.

2. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the Right of Way Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Right of Way Agreement as set forth in Section 4 of this Consent and the right to bind Owner to grant the notice and cure period as set forth in Section 5 of this Consent.

3. Owner's Acknowledgments. Owner expressly acknowledges that (a) Owner has received and reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect Owner's rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner's attorney; (c) the Agreement, with this Consent attached, will be recorded in the real property records of the County and will become a public record, and Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement and the Right of Way Agreement confidential; and (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a telecommunications carrier, as defined in 42 U.S.C. § 224, such as Grantee.

4. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner's alleged right to confidentiality relating to the Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

5. Notice and Cure Period. Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such default within thirty (30) days after notice, or, if such default cannot reasonably be cured in such 30-day period, Grantor shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Owner further agrees not to invoke any of its remedies, either express or implied, under the Right of Way Agreement, unless such default shall remain uncured following such notice and grace period.

6. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____

a _____

By: _____

Name: _____

Title: _____

STATE OF _____)
_____) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____

_____

Notary Public

My Commission Expires:

_____

EXHIBIT 1

Right of Way Agreement

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, U S WEST will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.[1]

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a Pole owned or controlled by U S WEST.[2]

10.8.1.2 Ducts and Conduits – Where it has ownership ~~and~~or control to do so, U S WEST will provide CLEC with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services.[3] A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in U S WEST immediately upon installation; ownership of such innerduct shall vest to U S WEST if and when CLEC abandons such innerduct.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building.[4] Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.[5]

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.[6]

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, U S WEST will provide, via a quitclaim without warranty, to CLEC, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services.[7]

10.8.1.3.1 ROW ~~includes~~ means a real property interest in privately-owned ~~land or other~~ real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit U S WEST to place telecommunications facilities on such real property; such property ~~owned or controlled by U S WEST and~~ may permit U S WEST to install and

---

1 Washington Workshop June 21-23, 2000 (proposed)
2 Colorado Workshop (proposed 7/14/00).
3 Washington Workshop July 6, 2000 (proposed)
4 Colorado Workshop (proposed 7/14/00)
5 Colorado Workshop August 1-3, 2000 (proposed); Washington Workshop July 6, 2000 (consensus)
6 Colorado Workshop (proposed 7/14/00)
7 Colorado Workshop (proposed 7/14/00)

maintain facilities ~~run~~ under, on, above, across, along or through ~~public or~~ private property or enter multi-unit buildings.[8]

10.8.1.4 CLEC Duties – Pursuant to 47 U.S.C. Section 251 (b)(4) and Colorado rules, CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to U S WEST on rates, terms, and conditions that are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for U S WEST to provide service.[9]

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real property.

10.8.2 Terms and Conditions

U S WEST shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised U S WEST Right of Way, Pole Attachment and/or Innerduct Occupancy General Information dDocument ~~U S WEST Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions~~ attached hereto as Exhibit D.[10] U S WEST will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. U S WEST shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, U S WEST agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by U S WEST, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 U S WEST will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to U S WEST facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. U S WEST agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business

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[8] Colorado Workshop (proposed 7/14/00)

[9] CO Workshop June 6-8, 2000 (proposed)

[10] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from ~~multiple locations~~more than one (1) location, span ~~multiple~~more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.[11] ~~when extensive requests involve the gathering of plats from multiple locations.~~

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel U S WEST to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.[12]

10.8.2.6 U S WEST retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event U S WEST determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a U S WEST spare conduit include the placement of Innerduct, U S WEST or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 U S WEST shall make manhole ingress and egress for Innerduct access available to CLEC. U S WEST will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4.[13] CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by U S WEST or CLEC at the option of CLEC.

10.8.2.9 Access to a U S WEST Central Office manhole will be permitted where technically feasible. If space is available, U S WEST will allow access

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11 Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

12 Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

13 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests U S WEST to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay U S WEST the total actual replacement cost, U S WEST's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to U S WEST. Upon request, U S WEST shall permit CLEC to install Poles/Innerduct. U S WEST reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including U S WEST or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, U S WEST or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. U S WEST does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of U S WEST and at U S WEST's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from U S WEST requesting rearrangement, U S WEST may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at U S WEST's expense.

10.8.2.12 U S WEST reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse U S WEST for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by U S WEST has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by U S WEST in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying

conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. U S WEST may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, U S WEST shall perform or have performed such corrections and CLEC shall pay U S WEST the cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by U S WEST.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, U S WEST may perform a reasonable number of inspections. U S WEST shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of ~~this Agreement~~Section 10.8.2.20; in which case CLEC shall reimburse U S WEST the costs of inspections and re-inspections, as required.[14] CLEC's representative may accompany U S WEST on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon U S WEST nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.[15]

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as U S WEST's workers. CLEC may use any contractor approved by U S WEST to perform Make-Ready Work.

10.8.2.18 If U S WEST terminates an ~~o~~Order for cause, or if CLEC terminates an ~~o~~Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~o~~Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause U S WEST to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to

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[14] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[15] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

U S WEST until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to U S WEST's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Quitclaim Right of Access Agreement (the "Quitclaim") by which U S WEST quitclaimed a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to U S WEST or its predecessor.[16]

10.8.2.19 U S WEST may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from U S WEST at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as U S WEST, its Affiliates or any other Telecommunications Carrier is held.[17] Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. ~~U S WEST's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate U S WEST premises CLEC's standard maintenance practices for facilities shall be made available to U S WEST upon request.[18]~~ CLEC shall in a timely manner comply with all requests from U S WEST to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should U S WEST under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, U S WEST will

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16 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

17 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus)

18 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due U S WEST. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due U S WEST for previous occupancy have been paid in full. CLEC shall advise U S WEST in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, U S WEST, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. U S WEST shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D) within thirty (30) calendar days of written notification from U S WEST of the unauthorized attachment; and (2) the unauthorized attachment did not require U S WEST to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. U S WEST shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by U S WEST rather than CLEC.[19] CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from U S WEST of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by U S WEST within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or U S WEST may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by U S WEST with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by U S WEST of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 U S WEST will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between ~~Attachment 1~~Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations

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[19] Colorado Workshop August 1-3, 2000 (proposed)Washington Workshop July 6, 2000 (consensus)

pursuant to 47 USC § 224 shall govern, provided, however, that any Quitclaim that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.[20]

10.8.2.25 Nothing in this SGAT shall require U S WEST to exercise eminent domain on behalf of CLEC.

10.8.3 Rate Elements

U S WEST fees for attachments are in accordance with Section 224 of the Act and FCC order, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or, with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies for each ROW the name of the original grantor and the nature of the ROW (e.g., easement, lease, etc.). ~~for lease.~~ Separate Inquiry Fees apply for ROW, poles and ~~for~~ conduit/innerduct.[21]

10.8.3.2 Field Verification Fee/Quitclaim Preparation Fee. In the case of Poles and Innerduct, Athe Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for poles and manholes. In the case of ROW, the Quitclaim Preparation Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for preparation of the Quitclaim for each ROW requested by the CLEC. ~~The estimated pre-paid~~ Field Verification and Quitclaim Preparation ~~f~~Fees shall be billed in advance. ~~Separate Field Verification Fees apply for poles and for manholes.~~[22]

10.8.3.3 Make-Ready ~~Work~~Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for ~~lease~~access. For innerduct ~~leases~~, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, ~~this~~Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW or

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[20] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[21] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[22] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

other circumstances giving rise to such work beyond the simple preparation of one or more Quitclaims. The estimated pre-paid fee shall be billed in advance.[23]

10.8.3.4 Pole Attachment Fee. A fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.[24]

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis.[25] This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 ~~ROW Access Fee~~Quitclaim Consideration. A pre-paid fee which constitutes consideration for quitclaiming the ROW to CLEC.~~is charged for the access, including during any Make-Ready period, to ROW.~~ This fee shall be a one-time (i.e., non-recurring) fee.~~annual unless CLEC requests that it be semi-annual.~~[26]

10.8.4 Ordering

~~The Ordering Process has~~ There are two (2) steps required before placing an Order for ~~ROW~~ access to Innerduct ~~and~~or Poles~~ Attachment~~: Inquiry Review and Field Verification. There is only one step required before obtaining access to ROW: Inquiry Review.[27] ~~distinct steps for ROW, Innerduct and Pole Attachment:~~

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ~~request for~~ ROW access, Pole Attachment or Innerduct Occupancy, U S WEST will provide CLEC with ~~a document of General Information for Pole Attachment and Innerduct Occupancy~~ Exhibit D~~ along with a description of the application process~~[28] The CLEC will review the documents and provide U S WEST with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on U S WEST owned or controlled Poles, Innerduct and ~~by~~ ROW. The CLEC will include the

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[23] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[24] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[25] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[26] Colorado Workshop (proposed 7/14/00)~~Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)~~

[27] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[28] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

appropriate Inquiry Fee with a completed Attachment 1.BA from Exhibit D.[29] ~~its inquiry~~.

~~10.8.4.2 Inquiry Reviews~~

10.8.4.1.1 ~~a)~~ Inquiry Review – ~~Innerduct~~Duct/Conduit.[30] U S WEST will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2~~b)~~ Inquiry Review – Poles. U S WEST will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.[31] ~~The U S WEST field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time.~~

10.8.4.1.3 Inquiry Review – ROW. U S WEST shall, upon request of CLEC, provide ~~a copy of ROW agreements (e.g. easements and licenses)~~the ROW Matrix to CLEC within ~~forty-five (45)~~ ten (10) days of the request. U S WEST makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that U S WEST's files contain only the original ROW instruments, and that the current

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[29] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[30] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

[31] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop June 21-23, 2000 (proposed)

owner of the fee estate may not be the party identified in the document provided by U S WEST.[32]

10.8.4.32 ~~Request – Innerduct~~Field Verification ~~–~~(Poles and ~~,~~Ducts), and Quitclaim Preparation (ROW) ~~and ROW~~. CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or quitclaim preparation for ROW. If field verification or quitclaim preparation is desired, CLEC will sign and return Attachment 1.B of ~~the General Information document~~ Exhibit D along with a check for the ~~estimated verification~~ relevant ~~costs~~fee (Field Verification Fee or Quitclaim Preparation Fee) plus $10.00 per quitclaim as consideration for the quitclaim. Upon payment of the ~~estimated verification~~ relevant ~~costs~~fee and quitclaim consideration, if applicable, U S WEST will provide, as applicable: depending on whether the request is for Poles~~,~~ ~~or~~ InnerdDuct or ROW: ~~Innerduct and/or ROW, the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required; and from whom;~~ (a) in the case of Poles or Innerduct, a field survey and site investigation of the Poles or D/~~Innerd~~uct ~~or ROW~~, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make-rReady costs required to provide Innerduct; the schedule in which the Make-rReady work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Quitclaim(s), executed and acknowledged by U S WEST. Upon completion of the Quitclaim(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Quitclaim becomes effective to quitclaim the interest identified in the Quitclaim (if any) to the extent that U S WEST has the right to quitclaim such interest (if any). ~~;~~ In the case of Poles or Innerduct, ~~Such~~ estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2 ~~the General Information document and shall be completed within thirty-five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less or as negotiated between U S WEST and CLEC identified in the Cost Quotation~~. The Attachment 2 quotation shall be valid for ninety (90) calendar days. ~~U S WEST will charge CLEC for field engineer time.~~[33]

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of U S WEST performing same) with the following stipulations: 1) Verifications will be conducted by a U S WEST approved contractor; 2) A U S WEST contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide U S WEST with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) U S WEST will use the CLEC-provided butterfly

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[32] Colorado Workshop ~~June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (proposed)~~ (proposed 7/14/00)

[33] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)(except for interval) (includes Colorado Workshop language proposed 7/14/00)

drawings and documentation to check against existing jobs and provide a final field report of available duct/innerduct. CLEC will be charged standard rates for Tactical Planner time.[34]

10.8.4.3 Order – Poles, ~~and Innerduct Ducts~~. ~~Upon completion of the procedures described above, U S WEST shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates.~~ The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated ~~lease~~recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the ~~Make-Ready~~ fees identified, U S WEST will assign the ~~CLEC's~~ requested space and ~~complete the~~ commence any Make-Ready work which may be required. U S WEST will notify CLEC when Poles/Innerduct are ready. ~~for attachment of facilities~~[35].

10.8.4.~~5~~4 Estimates of Make-Ready ~~in the Order~~ are used to cover actual Make-Ready costs.[36]

~~However, If~~if 10.8.4.4.1 If U S WEST requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed estimate~~.~~.[37]

10.8.4.4.2 Within fifteen (15) business days of a request therefore, U S WEST will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if U S WEST does not possess all such records at the time of the request, then U S WEST will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) ~~thirty (30) calendar days of the completion of Make-Ready work.~~calendar days ~~following its receipt of an invoice~~after notification of the completion of Make-Ready work.[38]

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of

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34 Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)

35 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

36 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

37 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

38 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

records if CLEC has requested records under this paragraph, or within ~~thirty (30)~~sixty (60) calendar days ~~following receipt of invoice if CLEC~~ after notification of the completion of Make-Ready Work~~of the completion of Make-Ready work~~ if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of U S WEST's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event, later than ninety (90) days following the request for credit.[39]

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, U S WEST denies the request for Poles, Ducts or ROW, upon CLEC request, U S WEST will ~~also~~ refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. ~~If U S WEST denies the Poles/Innerduct, ROW request, U S WEST shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and~~Upon CLEC request, ~~U S WEST will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any, upon request.~~[40] Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or U S WEST's~~U S WEST's~~ receipt of all records relating to the actual costs, whichever comes last, but in no event, later than ninety (90) days following the cancellation or denial.[41]

10.8.5 Billing

CLEC agrees to pay U S WEST ~~Poles/Innerduct/ROW preparation charges~~the following Fees in advance ~~and usage fees ("Fees") in advance~~ as specified in ~~the Request and Order~~ (Attachments 1.A, 1.B ~~and Attachment~~ 2 of Exhibit D~~the General Information Document~~): Inquiry Fee, Field Verification Fee, Quitclaim Preparation Fee, Make Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Quitclaim Consideration.[42] Make-Ready ~~F~~fees will be computed in compliance with applicable local, state and federal guidelines. ~~Such~~Usage ~~F~~fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC

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39 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink- in WA to verify)

40 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

41 Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

42 Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

requests a semi-annual basis). Annual Usage ~~F~~fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual Usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All F~~f~~ees~~Such~~Usage ~~Fees~~ shall be paid within thirty (30) days following receipt of invoices~~, therefore.~~[43] No ~~F~~fees are ~~not~~ refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both U S WEST and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

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[43] Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996.	))))	DOCKET NO. 97I-198T

THE COLORADO OFFICE OF CONSUMER COUNSEL'S
COMMENTS ON PRIVATE RIGHTS-OF-WAY AGREEMENTS

The Office of Consumer Counsel (OCC) hereby submits these comments on the issue of whether or not U S WEST should be obligated to disclose to competitive local exchange carriers (CLECs) rights-of-way agreements between U S WEST and private land owners. The OCC position is that it should be the option of the private landowner, not U S WEST or the CLEC, whether a rights-of-way contract is disclosed to a CLEC. Therefore, the OCC opposes any absolute requirement that U S WEST disclose such contracts. However, the OCC supports requirements that U S WEST be precluded from asserting confidentiality should the private landowner be willing to disclose a contract to a CLEC. Further, U S WEST should be obligated to disclose to landowners that it is neither illegal nor a violation of the rights-of-way agreement between he or she and U S WEST for the landowner to enter into a right-of-way agreement with a CLEC.

The OCC strongly opposes any requirement that a private right-of-way agreement between U S WEST and a landowner be disclosed to a CLEC over the landowner's objection. U S WEST is obligated to provide the CLECs with nondiscriminatory access to its rights-of-way. Telecommunications Act of 1996 §§ 224(f)(1) and 271(c)(2)(B)(iii). However, the OCC agrees that this obligation does not require U S WEST to disclose rights-of-ways agreements with private landowners. *See* U S WEST's Position Regarding Access to Private Rights-of-Way Agreements, June 22, 2000 (U S WEST Comments). As U S WEST points out this would prejudice private landowners. *Id.* at p. 3. Private persons should have the right to contract with whomever they choose relative to granting right-of-way on the landowner's property.

However, in part because of the policy concerns raised by AT&T in its follow-up comments filed on June 22, 2000, the OCC can see no policy justification for permitting U S WEST to refuse to disclose such a contract to a CLEC when the private landowner has no objection. Such a refusal by U S WEST could impede competition. It is possible that a landowner would not like the terms of the contract disclosed because the landowner does not want to enter into a new contract or because the landowner feels they can get a better deal from the CLEC if the CLEC does not know what the agreement is with U S WEST. It is also possible that a landowner would have no objection to disclosing the contract to a CLEC in order to simplify negotiations or to provide assurances to the CLEC that it is being treated fairly. The landowner should be able to free to choose with whom and how any negotiation is conducted. The OCC would support including in the SGAT a statement that U S WEST will not seek to block a CLEC's access to a private right-of-way contract between U S WEST and a private landowner by asserting a confidentiality right when the landowner has no objection to such a disclosure. The OCC would also support language to the effect that a CLEC may only take advantage of this if the CLEC is willing to have this obligation applied reciprocally.

The OCC is also concerned that the landowner may not be willing to negotiate with a CLEC regarding rights-of-way because the landowner is afraid that he or she would be violating the existing agreement with U S WEST. Without having seen such an agreement, it has been represented to the OCC that they may contain clauses that state that the agreement is "exclusive" and they may contain clauses that provide for penalties should there be a breach of the agreement. The OCC can easily imagine a property owner looking at such a contract and being concerned that by entering into an agreement with a CLEC he or she is violating the existing agreement with U S WEST. It does not appear to be U S WEST's position that a landowner is legally precluded from entering into a contract with a CLEC. *See* U S WEST Comments at p. 2 inviting CLECs to enter into their own agreements. But a private landowner may be unsure and may decide that his or her only options are to hire a lawyer to interpret the contract with U S WEST or cease negotiations with CLECs. To prevent this outcome, the SGAT should contain a requirement that, upon a CLEC's request, U S WEST will certify to a landowner with whom U S WEST has a right-of-way contract that the contract does not preclude the

landowner from entering into a right-of-way contract with a CLEC and there will no penalty under the U S WEST/landowner contract should the landowner do so.

The OCC's suggestions on this issue are designed to give landowners the maximum amount of flexibility possible to disclose rights-of-way contracts or not at their option and the be assured that by entering into negotiations and agreements with CLECs that the landowners are not violating their existing contract with U S WEST. This should protect the landowners' rights to grant or deny CLECs access to confidential information as the landowners' choose and limit the opportunities by U S WEST and the CLEC for gamesmanship. The OCC's proposals also are specifically structured to impose no obligations on non-telecommunications provider third-parties nor to deprive non-telecommunications provider third-parties of any rights they may have under existing law and contracts.

Dated this 27th day of June, 2000.

Respectfully submitted,

KEN SALAZAR
Attorney General

BY: _____

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ATTORNEYS FOR THE COLORADO
OFFICE OF CONSUMER COUNSEL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

QWEST'S RESPONSE REGARDING ACCESS TO RIGHTS-OF-WAY AND PRIVATE RIGHTS-OF-WAY AGREEMENTS AND REDACTION PRINCIPLES

INTRODUCTION

Qwest Corporation, formerly U S WEST Communications, Inc., ("Qwest") hereby submits this Response to the pleadings and comments of AT&T Communications of the Mountain States, Inc. ("AT&T") and the Office of Consumer Counsel (OCC) regarding access to rights-of-way (ROW) and private ROW agreements and redaction principles for such agreements. With this brief, Qwest also submits a proposed revised version of Section 10.8 of the Colorado Statement of Generally Available Terms ("SGAT") and a proposed revised version of Exhibit D to the SGAT.[1] The revisions in the attachments track the suggestions of the OCC and are consistent with all legitimate concerns raised by AT&T.[2]

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[1] The new revisions are highlighted in the attachments. Attachment 1 hereto is section 10.8 of the SGAT, and Attachment 2 is Exhibit D.

[2] OCC did suggest changes to sections 10.8.1.3 and 10.8.1.3.1 of the SGAT, which were not incorporated by Qwest. Qwest did not alter section 10.8.1.3 because the changes suggested, particularly the phrase "or other mechanism at CLEC's option," were not discussed or justified by OCC, nor is Qwest aware of any justification therefor. The OCC's suggested alteration of section 10.8.1.3.1 was not utilized

ANALYSIS

Response to OCC

The OCC made the following suggestions for revisions to Qwest's proposals:

1. The landowner should have the sole right to permit disclosure of its ROW and MDU agreements that have not been publicly recorded;
2. Notwithstanding the first point, Qwest has the right to redact dollar figures;
3. Disputes regarding redactions should be resolved pursuant to the dispute resolution procedure in the SGAT;
4. MDU Agreements should be disclosed under proper circumstances;
5. ROW and MDU agreements should be disclosed, assuming proper authorization from the landowner, as part of the Inquiry process;
6. Qwest should, upon CLEC request, state to landowners that their ROW and MDU agreements with Qwest do not preclude the formation of ROW or MDU agreements with CLECs; and
7. CLECs should use a process similar to Qwest's for responding to requests for access to ROW.

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because it too was not discussed by OCC and because the OCC's version appears to be fully consistent with the Qwest proposed language, making any such change unnecessary.

Although Qwest does not necessarily agree that these arguments state valid 271 obligations, Qwest did incorporate all of them into the attached revisions of section 10.8 and Exhibit D.[3] The following table shows where such revisions can be found:

OCC Argument	SGAT Sections	Exhibit D Provisions
1. Landowner Right to Confidentiality	10.8.4.1.3	2.1, 2.2
2. Dollar Figures	10.8.4.1.3	2.1
3. Dispute Resolution	10.8.4.1.3, 10.8.4.2[4]	No change necessary
4. Disclosure of MDUs	10.8.3.1, 10.8.4.1,[5] 10.8.4.1.3	2.1[6]
5. Disclosure on Inquiry	10.8.4.1.3	2.1
6. Qwest Statement to Landowners	10.8.2.26, 10.8.2.26.1, 10.8.2.26.2	No change necessary
7. Reciprocity	10.8.1.3.2	No change necessary

With these changes, Qwest believes it has satisfied all of OCC's concerns and gone well beyond the requirements of Checklist Item 3.

Response to AT&T

[3] It should be noted that no party has even attempted to demonstrate that Qwest's MDU agreements contain ROW.

[4] This change was made because any dispute the CLEC has over whether the underlying agreement contains a ROW in a landowner's property is a dispute with the landowner, not Qwest.

[5] This change was necessary to enable Qwest personnel to locate MDU agreements because such agreements are kept by street address.

AT&T agreed that Qwest may redact dollar figures,[7] but made the following arguments in response to Qwest's proposals:

- Qwest, not CLECs, should be required to obtain consent for disclosure from the landowner; and
- Landowners have no legitimate expectation of privacy in their MDU agreements.[8]

The OCC has properly rejected both of AT&T's points.

On the first argument, there is no basis in law to require Qwest to obtain for CLEC a waiver of confidentiality from private landowners. In addition, the FCC recently emphasized in its *SBC Texas Order*[9] that Section 271 proceedings are not the forum in which to address "new and unresolved interpretive disputes," such as this one. The FCC expressly rejected the position that Section 271 proceedings can be used "as a forum for the mandatory resolution of many . . . local competition disputes, including disputes on issues of general application that are more

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[6] The first change to this section, like the change to section 10.8.4.1 of the SGAT, was necessary to enable Qwest personnel to locate MDU agreements because such agreements are kept by street address.

[7] AT&T's and WoldCom's Response to U S WEST's Recommended Redaction Principles for Third Party Contracts at 2.

[8] AT&T stated it would not comment on Qwest's quitclaim procedure until July 28. Although that is inconsistent with Qwest's understanding of the procedure agreed to by the parties, Qwest will not object to this timing in the spirit of the collaborative process. However, because Qwest's quitclaim process by definition conveys to CLECs every real property right it has the legal ability to convey, no legitimate objections to the quitclaim process can be stated.

[9] Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 ¶ 23 (June 30, 2000).

appropriately the subjects of industry-wide notice-and-comment rulemaking."[10] The FCC further stated that such claims are "irreconcilable with" the 271 statutory scheme.[11]

> There may be other kinds of statutory proceedings, such as certain complaint proceedings, in which we may bear an obligation to resolve particular interpretative disputes raised by a carrier as the basis for its complaint. But the section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as precondition to granting a section 271 application.[12]

The FCC further stated:

> Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular State at a particular time. Such *fast-track, narrowly focused adjudications* -- generally dominated by extremely fact-intensive disputes about an individual BOC's empirical performance -- are often *inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability*. If Congress had intended to compel us to use section 271 proceedings for that purpose, *it would not have confined our already intensive review to an extraordinarily compressed 90-day timetable*.[13]

Also, if such policy disputes were handled in this docket, the public's interest in local and interLATA competition would be irretrievably harmed. Section 271 was intended to provide an incentive to Qwest to comply with the

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[10] *SBC Texas Order* ¶ 23.
[11] *Id.* ¶ 24.
[12] *Id.* (footnotes omitted).
[13] Emphasis added.

checklist items in order to be able to enter the interLATA market. The FCC found "[t]hat hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freighting their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor."[14]

Further, Qwest is in no better position than CLECs are to obtain landowner consent to disclosure. This is doubly true in light of Qwest's commitment to make a statement, on CLEC request, to the landowner to the effect that the landowner's agreement with Qwest does not prevent them from making ROW deals with CLECs. Finally, CLECs seeking ROW access cannot avoid dealings directly with the landowner, as a practical matter.

AT&T's second point – that landowners have no privacy expectations in their MDU agreements – AT&T is simply incorrect.[15] Assuming AT&T is acting in good faith and is after MDU agreements in order to obtain access to Qwest ROW that it alleges exists in such agreements, then one of the first things it will do with the MDU agreement is to publicly record it.[16] This is analogous to

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[14] *Id.* ¶ 26.

[15] Also, as with its first argument, AT&T is here improperly attempting to make new law in the context of a 271 proceeding.

[16] On the other hand, perhaps all AT&T is after is the contents of the MDU agreement in order to obtain an unfair bargaining advantage over the landowner in negotiations for its own MDU agreement with the landowner. If this is the case, then AT&T's real concern has nothing to do with Checklist Item 3, access to Qwest's ROW, and its arguments should be ignored and condemned. Also, if this is the

posting the agreement on the Internet. Literally anyone can gain access to publicly filed property records. It cannot seriously be contended that landowners had this in mind when they entered into MDU agreements with Qwest. Rather, such landowners legitimately see such an agreement as a private business deal that will not be widely disclosed to the public. In light of this expectation, it is only fair to require permission from the landowner prior to giving the agreement to a CLEC who intends to file it publicly. This is doubly true given that such landowners are not parties to this proceeding.

One final point regarding AT&T's issue: Qwest's experience with ROW access requests demonstrates this issue is not one of substantial importance to CLECs. AT&T has never requested access to Qwest ROW. Indeed, there has never been a single request for ROW access in the state of Colorado. The Colorado Commission should therefore not tarry long over this wolf in sheep's clothing. AT&T's real issue here concerns MDUs, not ROW. It did not and cannot demonstrate that MDUs contain ROW. Rather, it wants the MDUs in order to gain bargaining power over landowners, not to gain access to Qwest ROW. This scheme is nothing more or less than an anticompetitive abuse of the 271 process to prey on persons who are not present to defend their interests.

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case, then AT&T is clearly seeking to abuse this 271 process to oppress unrepresented and absent landowners.

CONCLUSION

With the changes proposed herein, Qwest has more than met its obligations to provide nondiscriminatory access to ROW. The Commission should therefore find that Qwest satisfies the requirements of 47 U.S.C. § 271(c)(2)(B)(iii).

Respectfully submitted,

QWEST CORPORATION

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ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the above and foregoing **QWEST'S RESPONSE REGARDING ACCESS TO RIGHTS-OF-WAY AND PRIVATE RIGHTS-OF-WAY AGREEMENTS AND REDACTION PRINCIPLES** was hand delivered this 28th day of July, 2000, to the following:

Mr. Bruce N. Smith
Colorado Public Utilities Commission
Executive Secretary
1580 Logan St., Office Level 2
Denver, CO 80203

and a copy has been hand delivered on the following:

**Joseph Molloy
Colorado Public Utilities Commission
1580 Logan St., OL-2
Denver, CO 80203

**Mana Jennings-Fader
Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

and a copy was served electronically to each person on the e-mail distribution list for this docket.

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EXHIBIT D

Date General Information Provided by ~~USW:~~Qwest: _____
General Agreement Number : _____
BAN Number(must be assigned before processing): _____

~~REVISED U S WEST POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY~~
REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE ~~7~~3/~~13~~7/00

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain ~~Co-Provider~~CLEC's facilities ("Facilities") to ~~U S WEST Communications, Inc.'s ("USW") Poles or~~Qwest Corporation's ("Qwest") Poles, to place Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to ~~"Poles/Innerduct"),~~Qwest's private right of way ("ROW"), to the extent Qwest as the right to grant such access. This General Information is necessary to determine if ~~USW~~Qwest can meet the needs of the ~~Co-Provider~~CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first ~~first~~-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.

2. **PROCESS**. The ~~USW~~Qwest process is designed to provide the ~~Co-Provider~~CLEC the information so as to assist ~~Co-Provider~~CLEC and ~~USW to make Poles and~~Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

   2.1 Inquiry Review - Attachment 1.A (Database Search). The ~~Co-Provider~~CLEC is requested to review this document and return ~~Form~~ Attachment 1.A along with two copies of a map as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest and the nonrefundable Inquiry ~~Preparation~~ Fee, calculated in~~the amount of One Hundred Fourteen Dollars ($114.00) per mile (with a One Hundred Fourteen Dollar minimum) for Pole Review, or the Innerduct Review Fee in the amount of One Hundred Seventy One Dollars ($171.00) per mile (with a One Hundred Seventy One Dollar minimum).~~accordance with Attachment 1.A hereto. These fees are intended to cover ~~USW's~~Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, ~~public record review~~, setting up an account, and determining time frames for completion of each task to meet the ~~Co-Provider~~CLEC's Request. Please be sure a BAN number is assigned by the Product Manager (call 303-896-0789) before sending ~~form~~ Attachment 1.A.

   As indicated on ~~Form~~ Attachment 1.~~-~~A, a copy of the signed ~~form~~ Attachment and maps of the desired route should be sent to the Product Manager while the fee should be sent to the ~~U S WEST~~Qwest CLEC Joint Use Manager with the original signed ~~form~~ Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be ~~equal to the best street maps available~~legible and identify all significant geographic characteristics including, but not limited to, the following: ~~, U S WEST~~Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. ~~should be identified where possible. Faxes are not acceptable~~ Qwest reserves the right to reject illegible or incomplete maps. If ~~Co-Provider~~CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps.

   ~~USW~~Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Quitclaim Preparation Costs Quotation~~Innerduct Permit Processing Costs Quotation~~ (Attachment 1.B) to the ~~Co-Provider~~CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, ~~USW~~Qwest will assign a Field

Engineer and provide his/her name and phone number to the ~~Co-Provider~~CLEC. The Field engineer will check the local database and be available for a joint verification with the ~~Co-Provider~~CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of ~~USW~~Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return ~~within ten (10) days (a)~~ a ROW information matrix ~~, within ten (10) days,~~ which will identify ~~(a)~~ the owner of the ROW as reflected in Qwest's records, and ~~(b)~~ the nature of each ROW (i.e., easement, license, etc.) (b) an MDU Matrix which identifies each requested legal agreement between Qwest and a third party who was a multi-unit building owner in Qwest's possession that relates to Telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party, and (c) a copy of all publicly recorded agreements listed in those Matrices. Qwest will provide a copy to CLEC of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owning the real property at issue by an executed Consent To Quitclaim Right Of Access Agreement, which is included in Attachment 4 hereto. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. The ROW information matrix will also indicate whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and ~~Co-Provider~~CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 ~~2.2 Request~~ Attachment 1.B (Verification) & Attachment 4 (Quitclaim Preparation). ~~Upon~~With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the ~~Co-Provider~~CLEC, ~~USW~~Qwest will conduct facilities verification and provide the requested information which may or may not include the following:a review of public and/or internal ~~USW~~ Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the ~~Co-Provider~~CLEC, if applicable, prior to installing its facilities. In the case of Poles, ~~form~~ Attachment 1.B orders the field verification which may be done jointly. ~~Such work shall be completed within thirty-five (35) days for a standard inquiry of one hundred (100) poles (or fewer), or thirty (30) Utility Hole sections (or fewer), or as negotiated between USW Qwest and Co-Provider~~CLEC ~~and identified in Attachment 1.B.~~ A copy of the signed ~~Form~~ Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the ~~USW-CLEC~~Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B ~~form~~. Upon completion of the verification, Attachment 2 will be sent to the ~~Co-Provider~~CLEC by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the ~~Co-Provider~~CLEC ~~by USW~~ an executed and acknowledged Quitclaim of Right of Access Agreement to the ~~Co-Provider~~CLEC in the form attached hereto as Attachment 4 (the "Quitclaim"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the Quitclaim, will be attached to the Quitclaim and provided to the ~~Co-Provider~~CLEC at the time of delivery ~~to the Co-Provider~~CLEC of the Quitclaim. If the ROW was created by a document that is not publicly

recorded, Qwest will attach a redacted copy of the Easement Agreement only if CLEC obtains authorization for such disclosure from the third party owning the real property at issue by an executed Consent to Quitclaim Right Of Access Agreement which is included in Attachment 4 hereto or if Qwest does not have a copy of the Easement Agreement in its possession, the Quitclaim will not have a copy of the Easement Agreement attached.

Verification/Quitclaim Preparation work shall be completed within the time frames designated in the table below:

SIZE OF VERIFICATION REQUEST	TIME LIMIT (DAYS)
Less than or equal to 100 poles or 30 manholes or 2 miles of linear ROW	35
Less than or equal to 200 poles or 60 manholes or 4 miles of linear ROW	50
Less than or equal to 300 poles or 90 manholes or 6 miles of linear ROW	65
Less than or equal to 400 poles or 120 manholes or 8 miles of linear ROW	80
Less than or equal to 500 poles or 150 manholes or 10 miles of linear ROW	95
Greater than 500 poles or 150 manholes or 10 miles of linear ROW	As Negotiated Between U S WEST and CLEC

In the case of ROW, after Qwest has delivered the Quitclaim, the ~~Co-Provider~~CLEC will be required to obtain the property owner's notarized signature on the Consent that is a part of the Quitclaim. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the ~~Co-Provider~~CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the ~~Co-Provider~~CLEC to obtain a copy of the Easement Agreement. After the ~~Co-Provider~~CLEC has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the ~~Co-Provider~~CLEC must record the Quitclaim (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) ~~Co-Provider~~CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, (ii) upon receipt of such Consent, Qwest will provide the ~~Co-Provider~~CLEC with a copy of the Easement Agreement with the monetary terms redacted, and (iii) the ~~Co-Provider~~CLEC must then record the Quitclaim, together with the Consent and the Easement Agreement, in the real property records for the county in which the property is located; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession, the ~~Co-Provider~~CLEC (i) must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the quitclaim, and (ii) must record the Quitclaim (with the Consent and the Easement Agreement or other documentation attached) in the real property records of the county in which the property is located. In any case, recordation of the properly completed, executed and acknowledged Quitclaim gives effect to Qwest's quitclaim of access to Qwest's ROW.

2.3 ~~2.3~~ Poles/Duct Order Attachment 2 (Access). ~~Upon~~In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, ~~USW~~Qwest will provide the ~~Co-Provider~~CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the ~~Co-Provider~~CLEC and applicable payment for the Make-Ready Fees identified, ~~USW~~Qwest will assign the ~~Co-Provider~~CLEC's requested space; Qwest will also , commence , the Make-ready work within 30 days following payment of the Make-Ready Fees

~~which may be required~~. ~~USW~~Qwest will notify ~~Co-Provider~~CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by ~~USW~~Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". ~~USW~~Qwest will repair or clear damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The ~~Co-Provider~~CLEC may contract separately with a ~~USW-approved~~Qwest-approved contractor to complete the construction provided a ~~USW~~Qwest inspector inspects the work during and after construction. Construction attaching to or entering ~~USW-owned~~Qwest-owned structure must conform to ~~USW~~Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The ~~Co-Provider~~CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ~~Poles/Innerduct. USW~~ROW/Poles/Innerduct Qwest agrees to issue to ~~Co-Provider~~CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing ~~Co-Provider~~CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned ~~in whole or in part~~ or controlled by ~~USW. USW~~Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to ~~Co-Co-Provider~~CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the ~~Co-Provider~~CLEC.

The costs included in the Poles/Innerduct ~~Permit Processing Costs Quotation~~Verification Fee are used to cover the costs incurred by ~~USW~~Qwest in determining if Poles/Innerduct space is available to meet the ~~Co-Provider~~CLEC's request; however, the ~~Co-Provider~~CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If ~~USW~~Qwest denies access ~~to the Poles/Innerduct Request, or section thereof~~, ~~USW~~Qwest shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Quitclaim. In the event that complications arise with respect to preparing the Quitclaim or any other aspect of ~~granting~~quitclaiming access to Qwest's ROW, the ~~Co-Provider~~CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

3. DISPUTE RESOLUTION

~~a~~3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the

practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

~~B~~3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

~~C~~3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

~~D~~3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A

General Agreement No._____
BAN Number (must be assigned before processing):_____

Poles/Innerduct/ROW Inquiry Preparation Fee

Date Submitted:_____ Date Replied to ~~Co-Provider~~CLEC: _____

~~Co-Provider~~CLEC Name: _____

Contact name:_____
Address: _____
Phone Number:_____
e-mail address:_____
State or location of inquiry:_____

Poles/Innerduct Permit Database Search Costs Quotation
(One Mile Minimum)

	Costs	Est. Miles	Total
1. Pole ~~Database & Field Engineer~~ Inquiry Fee $_____	~~$ 114.00 per mile~~	see attached pricing chart	_____
2. Innerduct ~~Database~~ Inquiry Fee $_____	~~$ 171.00 per mile~~	see attached pricing chart	_____
3. ROW Records Inquiry $_____	~~$ 171.00 per mile~~	see attached pricing chart	_____

4. Estimated Interval for Completion of Items ~~1 or 2~~ 1, 2 and/or 3: 10 Days

~~4.~~5. Additional requirements of ~~Co-Provider~~CLEC: _____

This Inquiry will result in (a) in the case of Poles and Innerduct, a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary Quitclaims. In the case of Poles, the name and telephone number of the Field Engineer will be provided so that the ~~Co-Provider~~CLEC may contact the ~~USW~~Qwest Field engineer and discuss attachment plans. If a field verification of the poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW~~Qwest offers such Poles/Innerduct.

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH

Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount ($114 per mile or $171 per mile) to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112
303-792-6990

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202 303-896-0789

ATTACHMENT 1.B

General Agreement No._____
BAN Number:_____

Poles/Innerduct Verification/ROW Quitclaim Preparation Costs Quotation

Date Nonrefundable Received: Date Replied to ~~Co-Provider~~CLEC: _____

NOTE: THIS ATTACHMENT WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO THE ~~CO-PROVIDER~~CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.

	Estimated Costs	Number	Total Charge
1. Pole Field ~~Survey~~ Verification Fee (10 pole minimum)	see attached pricing chart		
	$ ~~ICB per pole~~		
2. Innerduct Field ~~Survey~~Verification Fee	see attached pricing chart	$	~~ICB per Manhole~~
3. Quitclaim Preparation and Consideration	$ per Quitclaim		
	$ ~~$171 per Quitclaim~~		

~~3~~ 4. Estimated Interval for Completion of Items ~~1 or 2~~: 1, 2 and/or 3: _____ Working Days

5. Additional requirements of ~~Co-Provider~~CLEC: _____

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the processing of its field survey/preparation of Quitclaims, and acknowledges receipt of this General Information, including the General Terms and Conditions under which ~~USW offers such Poles/Innerduct. The Co-~~Qwest offers such ROW/Poles/Innerduct. The ~~Co-Provider~~CLEC acknowledges the above costs are estimates only and ~~Co-Provider~~CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

A copy of this form signed form should be sent to:

John Carveth, ~~U S WEST~~Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202

The original signed form should be sent with a check for the verification amount to:

Pam Fisher, ~~U S WEST~~Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

Inquiry and Verification, Poles and Ducts

STATE	POLE/ROW INQUIRY per mile***	DUCT INQUIRY per mile***	POLE VERIFICATION per pole***	DUCT VERIFICATION per manhole***
AZ	$	$	$	$
CO	$	$	$	$
ID	$	$	$	$
IA	$	$	$	$
MN	$	$	$	$
MT	$	$	$	$
NE	$	$	$	$
NM	$	$	$	$
ND	$	$	$	$
OR*	$	$	$	$
SD	$	$	$	$
UT	$	$	$	$
WA*	$	$	$	$
WY	$	$	$	$

***** Qwest is currently recalculating costs for all states. Figures for all states will be provided when they are available.**

* ordered rates by the state commission.

Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be $200.00 per pole or innerduct segment between manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3.

ATTACHMENT 2

Poles/Innerduct Order General Agreement No_____
BAN Number:_____

NOTE: THIS FORM WILL BE COMPLETED BY ~~USW~~QWEST AND SENT TO ~~CO-PROVIDER~~CLEC FOR SIGNATURE

Make-ready Work required: Yes ( ) No ( ) Date Received:_____

If Yes is checked, estimated Make-ready costs: $_____
Note: Make-Ready charges do not include construction work to enhance infrastructure

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - _____ .
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, ~~Co-Provider~~CLEC must:
   a. provide ~~USW~~Qwest representative, a final design showing splice, racking and slack locations in ~~USW~~Qwest utility holes.
   b. tag all equipment located in/on ~~USW's~~Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) ~~Co-Provider~~CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. ~~Per~~ Pole ~~Attached~~Attachment, Per ~~Foot~~ Pole	$ _____ /~~Foot~~	_____	$_____
2. ~~Per~~ Innerduct Occupancy, Per Foot	$ _____ /~~Foot~~	_____	$_____
Total Annual Recurring Charges			$

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you choose not to place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO_____ (/DAY * DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the ~~Co-Provider~~CLEC desires ~~USW~~Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which ~~USW~~Qwest offers such Poles/Innerduct. By signing this document you are ~~leasing the available space~~agreeing to the access described herein.

Return this signed form and check to: Pam ~~Fisher, U S WEST~~Fisher, Qwest **CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112**

Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

~~U S WEST~~Qwest Field Engineer: _____

Phone Number: _____

		~~U S WEST Communications, Inc.~~
		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

ATTACHMENT 3

General Agreement No._____

~~U S WEST POLE AND~~QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY
GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ ("~~Co-Provider~~CLEC") and ~~**U S WEST Communications, Inc.** ("USW")~~Qwest Corporation ("Qwest"), for one or more Orders for the ~~Co-Provider~~CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to ~~USW's~~Qwest's Poles and/or placement of Facilities on or within ~~USW's~~Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and ~~Co-Provider~~CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

1.1 Subject to the provisions of this Agreement, ~~USW~~Qwest agrees to issue to ~~Co-Provider~~CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing ~~Co-Provider~~CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned ~~in whole or in part~~or controlled by ~~USW~~Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the ~~Co-Provider~~CLEC. Any and all rights granted to ~~Co-Provider~~CLEC shall be subject to and subordinate to any future local, state and/or federal ~~requirements~~. requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.

1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel ~~USW~~Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by ~~Co-Provider~~CLEC or to obtain any ROW for ~~Co-Provider~~CLEC's use.

1.3 ~~USW~~Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. TERM. Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Quitclaim (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time ~~Co-Provider~~CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

3.1 ~~Co-Provider~~CLECTo the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to ~~USW~~the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.

3.3 If ~~USW~~Qwest terminates this Agreement for Cause, or if ~~Co-Provider~~CLEC terminates this Agreement without Cause, ~~Co-Provider~~CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause ~~USW~~Qwest to remove its Facilities from the Poles/Innerduct at ~~Co-Provider~~CLEC's expense; provided, however, that ~~Co-Provider~~CLEC shall be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until ~~Co-Provider~~CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

3.4 If this Agreement or any Order is terminated for reasons other than Cause, then ~~Co-Provider~~CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that ~~Co-Provider~~CLEC ~~shall~~Co-Provider~~CLEC~~ shall be liable for and pay all fees and charges provided for in this Agreement to ~~USW~~Qwest until ~~Co-Provider~~CLEC's Facilities are physically removed.

3.5 ~~USW~~Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the ~~Co-Provider~~CLEC. ~~-~~Upon abandonment of Poles/Innerduct, and with the concurrence of the other ~~Co-Provider~~CLEC(s), if necessary, ~~Co-Provider~~CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from ~~USW~~Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. **CHARGES AND BILLING.**

4.1. ~~Co-Provider~~CLEC agrees to pay ~~USW~~Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. ~~Co-Provider~~CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. ~~USW~~Qwest has the right to revise Fees, at its sole discretion, upon written notice to ~~Co-Provider~~CLEC within at least sixty (60) days prior to the end of any annual billing period.

5. **INSURANCE.** The ~~Co-Provider~~CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars ($100,000.00) for each accident.

5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the ~~Co-Provider~~CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly

referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4 ~~USW~~Qwest may require the ~~Co-Provider~~CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by ~~USW~~Qwest shall be borne by ~~USW, and the Co-Provider~~CLEC-Qwest, and the ~~Co-Provider~~CLEC shall arrange to have such costs billed separately and directly to ~~USW~~Qwest by the insuring carrier(s). ~~USW~~Qwest shall be authorized by the ~~Co-Provider~~CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the ~~Co-Provider~~CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a hole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by ~~USW~~Qwest. The ~~Co-Provider~~CLEC shall forward to ~~USW~~Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) ~~USW~~Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to ~~USW~~Qwest; (3) certification that underground hazard overage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The ~~Co-Provider~~CLEC shall not commence work hereunder until the obligations of the ~~Co-Provider~~CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the ~~Co-Provider~~CLEC of any liability hereunder or in any way modify the ~~Co-Provider~~CLEC's obligations to indemnify ~~USW~~ Qwest.

5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars ($6,000,000.00). In addition, said policy shall name ~~USW~~Qwest and the ~~Co-Provider~~CLEC/Sub~~Co-Provider~~CLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the ~~USW~~Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

6.1 ~~USW~~Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a ~~USW~~Qwest spare conduit include the placement of innerduct, ~~USW~~Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event ~~USW~~Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before ~~Co-Provider~~CLEC's Facilities can be accommodated, the cost of such modification will be included in the ~~Co-Provider~~CLEC's nonrecurring charges for the associated Poles/Innerduct Order.

6.2 ~~Co-Provider~~CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and ~~USW~~Qwest does not warrant or represent that providing ~~Co-Provider~~CLEC with access to the Poles/Innerduct in any way constitutes such legal right. ~~The~~ ~~Co-Provider~~CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the ~~Co-Provider~~CLEC's sole expense, in order to perform its obligations under this Agreement. The ~~Co-Provider~~CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide ~~USW~~Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The ~~Co-Provider~~CLEC shall comply with all conditions of rights-of-way and Orders.

6.3 ~~Co-Provider~~CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. ~~USW's~~Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate ~~USW~~Qwest premises. ~~Co-Provider~~CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to ~~USW~~Qwest upon written request. ~~Co-Provider~~CLEC shall within thirty (30) days comply and provide the requested information to ~~USW~~Qwest to bring their facilities into compliance with these terms and conditions.

6.4. In the event of any service outage affecting both ~~USW~~Qwest and ~~Co-Provider~~CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.

6.5 In the event of an infrastructure outage, the ~~Co-Provider~~CLEC should contact their Network Maintenance Center~~at~~ ~~1-800-223-7881~~at 1-800-223-7881 or the ~~Co-Provider~~CLEC may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

7.1. If ~~Co-Provider~~CLEC requests ~~USW~~Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the ~~Co-Provider~~CLEC and ~~USW~~Qwest determines in its sole discretion to provide the requested capacity, the ~~Co-Provider~~CLEC shall pay ~~USW~~Qwest the total replacement cost, ~~USW's~~Qwest's cost to transfer its attachments, as

necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in ~~USW~~Qwest. To the extent that a modification is incurred for the benefit of multiple parties, ~~Co-Provider~~CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and ~~Co-Provider~~CLEC shall be responsible for its pro rata share of the modification cost. Except as set forth herein, ~~Co-Provider~~CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of ~~USW~~Qwest shall be provided to ~~Co-Provider~~CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If ~~Co-Provider~~CLEC does not rearrange its facilitates within sixty (60) days after receipt of written notice from ~~USW~~Qwest requesting such rearrangement, ~~USW~~Qwest may perform or cause to have performed such rearrangement and ~~Co-Provider~~CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. **INSPECTION OF FACILITIES**. ~~USW~~Qwest reserves the right to make final construction, subsequent and periodic inspections of ~~Co-Provider~~CLEC's facilities occupying the Poles/Innerduct system. ~~Co-Provider~~CLEC shall reimburse ~~USW~~Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. ~~Co-Provider~~CLEC shall provide written notice to ~~USW~~Qwest, at least fifteen (15) days in advance, of the locations where ~~Co-Provider~~CLEC's plant is to be constructed.

8.2. The ~~Co-Provider~~CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to ~~USW~~Qwest within five (5) business days of the date(s) of the occupancy.

8.3. ~~USW~~Qwest shall provide written notification to ~~Co-Provider~~CLEC within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by ~~USW~~Qwest has been completed, ~~Co-Provider~~CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from ~~USW~~Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether ~~Co-Provider~~CLEC has energized the facilities occupying said Poles/Innerduct system, unless ~~USW~~Qwest has provided ~~Co-Provider~~CLEC a written extension to comply. ~~Co-Provider~~CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to ~~Co-Provider~~CLEC until such non-complying conditions are corrected or until ~~Co-Provider~~CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, ~~USW~~Qwest shall perform such corrections and ~~Co-Provider~~CLEC shall pay ~~USW~~Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken my be made by ~~USW~~Qwest.

8.5. Once the ~~Co-Provider~~CLECs facilities occupy ~~USW~~Qwest Poles/Innerduct system and Exhibit A has been received by ~~USW~~, ~~USW~~Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by ~~USW~~Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that ~~Co-Provider~~CLEC has failed to comply with the provisions set forth in this Agreement, in which case the ~~Co-Provider~~CLEC shall reimburse ~~USW~~Qwest for

full costs of inspection, and re-inspection to determine compliance as required. A ~~Co-Provider~~CLEC representative may accompany ~~USW~~Qwest on field inspections scheduled specifically for the purpose of inspecting ~~Co-Provider~~CLEC's Facilities; however, ~~Co-Provider~~CLEC's costs associated with its participation in such inspections shall be borne by ~~Co-Provider~~CLEC. ~~USW~~Qwest shall have no obligation to notify ~~Co-Provider~~CLEC, and ~~Co-Provider~~CLEC shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the ~~Co-Provider~~CLEC within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon ~~USW~~Qwest, and shall not relieve ~~Co-Provider~~CLEC of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITITES

9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USW, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars ($200.00) per attachment per Pole or innerduct run between manholes, and require the ~~Co-Provider~~CLEC to submit in writing, within ten (10) day after receipt of written notification from USW of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USW within the specified time period, the ~~Co-Provider~~CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USW may remove the ~~Co-Provider~~CLEC's facilities without liability, and the cost of such removal shall be borne by the ~~Co-Provider~~CLEC.

9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not ~~Co-Provider~~CLEC is ordered to continue the occupancy of the Poles/Innerduct system.

9.3. No act or failure to act by ~~USW~~Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by ~~USW~~Qwest of any of its rights of privileges under this Agreement or otherwise.

10. REMOVAL OF FACILITIES. Should ~~USW~~Qwest, under the provisions of this Agreement, remove ~~Co-Provider~~CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), ~~USW~~Qwest will deliver the Facilities removed upon payment by ~~Co-Provider~~CLEC of the cost of removal, storage and delivery, and all other amounts due ~~USW~~Qwest. If payment is not received by ~~USW~~Qwest within thirty (30) days, ~~Co-Provider~~CLEC will be deemed to have abandoned such facilities, and ~~USW~~Qwest may dispose of said facilities as it determines to be appropriate. If ~~USW~~Qwest must dispose of said facilities, such action will not relieve ~~Co-Provider~~CLEC of any other financial responsibility associated with such removal as provided herein. If ~~Co-Provider~~CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the ~~Co-Provider~~CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to ~~USW~~Qwest for previous occupancy have been paid in full. ~~Co-Provider~~CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by ~~Co-Provider~~CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by ~~Co-Provider~~CLEC," each as attached hereto, advising ~~USW~~Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

11. INDEMNIFICATION AND LIMITATION OF LIABILITIES. ~~Co-Provider~~CLEC shall indemnify and hold harmless ~~USW~~Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees

against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the ~~Co-Provider~~CLEC; (2) actual or alleged fault or negligence of the ~~Co-Provider~~CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by ~~Co-Provider~~CLEC under this Contract or any product liability claims relating to any material supplied by ~~Co-Provider~~CLEC under this Contract; (4) failure of ~~Co-Provider~~CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by ~~Co-Provider~~CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of ~~USW~~Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the~~USW~~Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the ~~Co-Provider~~CLEC. If both ~~USW~~Qwest and the ~~Co-Provider~~CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the ~~Co-Provider~~CLEC, if ~~USW~~Qwest desires. ~~USW~~Qwest shall give the ~~Co-Provider~~CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the ~~Co-Provider~~CLEC's request and at the ~~Co-Provider~~CLEC's expense all information and assistance available to the ~~USW~~Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE ~~CO-PROVIDER~~CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST ~~USW~~QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE ~~CO-PROVIDER~~CLEC, AND THE ~~CO-PROVIDER~~CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF ~~USW~~QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF ~~USW~~QWEST WHEN CONCURRENT WITH THAT OF THE ~~CO-PROVIDER~~CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS

INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. FORCE MAJEURE

12.1 The ~~Co-Provider~~CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the ~~Co-Provider~~CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, ~~USW~~Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the ~~Co-Provider~~CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the ~~Co-Provider~~CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 ~~USW~~Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by ~~USW~~Qwest after the contingency occurs. With respect to ~~USW's~~Qwest's election of Section 12.2.3 above:

12.3.1 ~~USW~~Qwest shall give the ~~Co-Provider~~CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the ~~Co-Provider~~CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The ~~Co-Provider~~CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the ~~USW's~~Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 ~~USW~~Qwest shall be excused from its performance if prevented by acts or events beyond the ~~USW's~~Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The ~~Co-Provider~~CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The ~~Co-Provider~~CLEC acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which ~~Co-Provider~~CLEC shall remain fully liable.

15. **SEVERABILITY**. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16. **GENERAL PROVISIONS**.

16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

16.2 This Agreement shall not be assignable by ~~Co-Provider~~CLEC without the express written consent of ~~USW~~Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by ~~Co-Provider~~CLEC to ~~Co-Provider~~CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that ~~Co-Provider~~CLEC must obtain ~~USW's~~Qwest's consent in any event.

16.3 This Agreement benefits ~~Co-Provider~~CLEC and ~~USW~~Qwest. There are no third party beneficiaries.

16.4 This Agreement constitutes the entire understanding between ~~Co-Provider~~CLEC and ~~USW~~Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

~~Co-Provider~~CLEC Corporation	~~U S WEST Communications, Inc.~~Qwest
_____ Signature	_____ Signature
_____ Name Typed or Printed	JOHN CARVETH Name Typed or Printed
_____ Title	PRODUCT MANAGER Title
_____ Date	_____ Date
~~Address for Notices~~ _____ ~~Contact:~~ ~~Phone:~~ _____ ~~FAX:~~ _____	~~Address for Notices~~ ~~U S WEST Communications, Inc.~~ ~~1801 California, Rm. 2330~~ ~~Denver, CO 80202~~ ~~Contact: JOHN CARVETH~~ ~~Phone: 303-896-0789~~ ~~FAX: 303-896-9022~~
Address for Notices _____ Contact: Phone: _____ FAX:	Address for Notices Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202 Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022

EXHIBIT A

PULLING IN REPORT

_____ 2019

~~U S WEST Communications, Inc.~~Qwest Corporation

_____

_____

This is to advise you that pursuant to General Agreement No. _____ granted to us under the terms of the Innerduct Agreement dated _____, ~~1999~~ 20__ we have completed installation of the following cable into the following ducts.

Municipality

Location

From Manhole at	To Manhole at	Cable and Equipment Installed	Date

_____

Name of ~~Co-Provider~~CLEC

By: _____

Title: _____

Receipt of the above report is hereby acknowledged _____, ~~1920~~__.

~~U S WEST Communications, Inc.~~Qwest Corporation

By: _____

Title: _____

1. Reports shall be submitted in duplicate.

2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ___, unless a change has been previously authorized in writing by Licensor.

~~Co-Provider~~CLEC: _____

NOTIFICATION OF SURRENDER OR MODIFICATION
OF CONDUIT OCCUPANCY ORDER BY ~~CO-PROVIDER~~CLEC

Street Address _____
City and State _____
Date _____

~~U S WEST, Inc.~~Qwest Corporation

In accordance with the terms and conditions of this Agreement between us, dated _____, ~~19~~20__ _____, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated _____, ~~19~~20__) effective _____.

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED

_____
Name of Licensor

_____
Name of Co- Provider

_____
Date Notification Received

By _____

_____
Date Modification Accepted

Title _____

By _____

Discontinued:

Total duct footage _____

~~Co-Provider~~CLEC

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY ~~CO-PROVIDER~~CLEC

Street Address _____
City and State _____
Date _____

~~U S WEST, Inc.~~Qwest Corporation
In accordance with the terms and conditions of the Agreement between ~~USW~~Qwest and ~~Co-Provider~~CLEC, dated _____,
~~19~~20__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in ~~Co-Provider~~CLEC's prior notification to ~~USW~~Qwest,
dated _____, ~~19~~20__) effective _____.

	POLE NO.	ASSOC.POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC.RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			
10.		A A/GS -			
11.		A A/GS -			
12.		A A/GS -			
13.		A A/GS -			

Date Notification Received _____
Date Modification Received _____
By: _____

_____
Name of ~~Co-Provider~~CLEC

Discontinued:

By: _____

Poles _____
Anchors _____
Anchor/Guy Strands _____

Its: _____

ATTACHMENT 4
FORM OF QUITCLAIM RIGHT OF ACCESS AGREEMENT

After recording, please return to:

Qwest Corporation
1801 California Street
Suite 2330
Denver, Colorado 80202

Attention: Structure Project Manager

QUITCLAIM RIGHT OF ACCESS AGREEMENT

THIS QUITCLAIM RIGHT OF ACCESS AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address is _____, and _____, a _____, whose address is _____ ("Grantee").

RECITALS

A. This Agreement relates to certain real property (the "Property") located in the County of _____ (the "County"), State of _____ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit ~~A~~1 (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to quitclaim to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such quitclaim conveyance.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby quitclaims to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights quitclaimed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Consent by Owner. Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. Recordation of Agreement. Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with

the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the

legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by:

QWEST CORPORATION, a Colorado corporation, successor in interest to U S WEST COMMUNICATIONS, INC., a Colorado corporation

By:
Name:
Title:

STATE OF)
) ss:
COUNTY OF)

The foregoing instrument was acknowledged before me this day of , 2000, by as of QWEST CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(SEAL)

Notary Public
My Commission Expires:

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____, a _____

By: _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

CONSENT TO QUITCLAIM RIGHT OF ACCESS AGREEMENT

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the foregoing Quitclaim Right of Access Agreement (the "Agreement"), as required therein. This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee.

2. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the Right of Way Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Right of Way Agreement as set forth in Section 4 of this Consent and the right to bind Owner to grant the notice and cure period as set forth in Section 5 of this Consent.

3. Owner's Acknowledgments. Owner expressly acknowledges that (a) Owner has received and reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect Owner's rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner's attorney; (c) the Agreement, with this Consent attached, will be recorded in the real property records of the County and will become a public record, and Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement and the Right of Way Agreement confidential; and (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a telecommunications carrier, as defined in 42 U.S.C. § 224, such as Grantee.

4. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner's alleged right to confidentiality relating to the Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

5. Notice and Cure Period. Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such default within thirty (30) days after notice, or, if such default cannot reasonably be cured in such 30-day period, Grantor shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Owner further agrees not to invoke any of its remedies, either express or implied, under the Right of Way Agreement, unless such default shall remain uncured following such notice and grace period.

6. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____

a _____

By: _____

Name: _____

Title: _____

STATE OF _____)
_____) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____

_____

Notary Public

My Commission Expires:

_____

EXHIBIT 1

Right of Way Agreement

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, U S WEST will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.[1]

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a Pole owned or controlled by U S WEST.[2]

10.8.1.2 Ducts and Conduits – Where it has ownership ~~and~~or control to do so, U S WEST will provide CLEC with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services.[3] A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in U S WEST immediately upon installation; ownership of such innerduct shall vest to U S WEST if and when CLEC abandons such innerduct.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building.[4] Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.[5]

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.[6]

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, U S WEST will provide, via a quitclaim without warranty, to CLEC, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services.[7]

10.8.1.3.1 ROW ~~includes~~ means a real property interest in privately-owned ~~land or other~~ real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit U S WEST to place telecommunications facilities on such real property; such property

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1 Washington Workshop June 21-23, 2000 (proposed)
2 Colorado Workshop (proposed 7/14/00).
3 Washington Workshop July 6, 2000 (proposed)
4 Colorado Workshop (proposed 7/14/00)
5 Colorado Workshop August 1-3, 2000 (proposed); Washington Workshop July 6, 2000 (consensus)
6 Colorado Workshop (proposed 7/14/00)
7 Colorado Workshop (proposed 7/14/00)

~~owned or controlled by U S WEST and~~ may permit U S WEST to install and maintain facilities ~~run~~ under, on, above, across, along or through ~~public or~~ private property or enter multi-unit buildings.[8]

~~10.8.1.3.2 Requests by U S WEST for ROW owned or controlled by CLEC shall be handled in a manner similar to that by which U S WEST handles requests by CLEC for ROW owned or controlled by U S WEST pursuant to this SGAT.~~

10.8.1.4 CLEC Duties – Pursuant to 47 U.S.C. Section 251 (b)(4) and Colorado rules, CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to U S WEST on rates, terms, and conditions that are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for U S WEST to provide service.[9]

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real property.

10.8.2 Terms and Conditions

U S WEST shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised U S WEST Right of Way, Pole Attachment and/or Innerduct Occupancy General Information dDocument ~~U S WEST Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions~~ attached hereto as Exhibit D.[10] U S WEST will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. US WEST shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, U S WEST agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by U S WEST, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 U S WEST will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements

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[8] Colorado Workshop (proposed 7/14/00)

[9] CO Workshop June 6-8, 2000 (proposed)

[10] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

affect requests for attachments or occupancy to U S WEST facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. U S WEST agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from ~~multiple locations~~more than one (1) location, span ~~multiple~~more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.[11] ~~when extensive requests involve the gathering of plats from multiple locations~~.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel U S WEST to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.[12]

10.8.2.6 U S WEST retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event U S WEST determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a U S WEST spare conduit include the placement of Innerduct, U S WEST or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 U S WEST shall make manhole ingress and egress for Innerduct access available to CLEC. U S WEST will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and

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[11] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[12] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4.[13] CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by U S WEST or CLEC at the option of CLEC.

10.8.2.9 Access to a U S WEST Central Office manhole will be permitted where technically feasible. If space is available, U S WEST will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests U S WEST to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay U S WEST the total actual replacement cost, U S WEST's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to U S WEST. Upon request, U S WEST shall permit CLEC to install Poles/Innerduct. U S WEST reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including U S WEST or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, U S WEST or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. U S WEST does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of U S WEST and at U S WEST's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from U S WEST requesting rearrangement, U S WEST may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or

[13] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

for routine maintenance of Poles/Innerduct completed at U S WEST's expense.

10.8.2.12 U S WEST reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse U S WEST for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by U S WEST has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by U S WEST in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. U S WEST may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, U S WEST shall perform or have performed such corrections and CLEC shall pay U S WEST the cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by U S WEST.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, U S WEST may perform a reasonable number of inspections. U S WEST shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of ~~this Agreement~~Section 10.8.2.20; in which case CLEC shall reimburse U S WEST the costs of inspections and re-inspections, as required.[14] CLEC's representative may accompany U S WEST on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon~~

[14] Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

~~U S WEST nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.[15]

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as U S WEST's workers. CLEC may use any contractor approved by U S WEST to perform Make-Ready Work.

10.8.2.18 If U S WEST terminates an ~~e~~Order for cause, or if CLEC terminates an ~~e~~Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~e~~Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause U S WEST to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to U S WEST until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to U S WEST's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Quitclaim Right of Access Agreement (the "Quitclaim") by which U S WEST quitclaimed a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to U S WEST or its predecessor.[16]

10.8.2.19 U S WEST may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from U S WEST at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in

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15 Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

16 Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as U S WEST, its Affiliates or any other Telecommunications Carrier is held.[17] Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. ~~U S WEST's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate U S WEST premises. CLEC's standard maintenance practices for facilities shall be made available to U S WEST upon request.~~[18] CLEC shall in a timely manner comply with all requests from U S WEST to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should U S WEST under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, U S WEST will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due U S WEST. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due U S WEST for previous occupancy have been paid in full. CLEC shall advise U S WEST in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, U S WEST, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. U S WEST shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D) within thirty (30) calendar days of written notification from U S WEST of the unauthorized attachment; and (2) the unauthorized attachment did not require U S WEST to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. U S WEST shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by U S WEST rather than CLEC.[19] CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from U S WEST of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by U S WEST within the specified time period, CLEC will be required to remove its unauthorized facility within thirty

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[17] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus)

[18] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[19] Colorado Workshop August 1-3, 2000 (proposed)Washington Workshop July 6, 2000 (consensus)

(30) calendar days of the final date for submitting the required application, or U S WEST may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by U S WEST with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by U S WEST of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 U S WEST will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between ~~Attachment 1~~Exhibit D, on one hand, and this SGAT or 47USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided, however, that any Quitclaim that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.[20]

10.8.2.25 Nothing in this SGAT shall require U S WEST to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, U S WEST will certify to a landowner with whom U S WEST has a ROW agreement the following:

10.8.2.26.1 that the agreement does not preclude the landowner from entering into a ROW agreement with CLEC and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and U S WEST if the landowner enters into a ROW agreement with CLEC.

10.8.3 Rate Elements

U S WEST fees for attachments are in accordance with Section 224 of the Act and FCC order, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a

[20] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

requested route and/or facility is available, or, with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies for each ROW the name of the original grantor and the nature of the ROW (e.g., easement, lease, etc.) ~~and the MDU Matrix which identifies each requested legal agreement between U S WEST and a third party who was a multi-unit building owner in U S WEST's possession that relates to telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party for lease~~. Separate Inquiry Fees apply for ROW, poles and ~~for~~ conduit/innerduct.[21]

10.8.3.2 Field Verification Fee/Quitclaim Preparation Fee. In the case of Poles and Innerduct, ~~A~~the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for poles and manholes. In the case of ROW, the Quitclaim Preparation Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for preparation of the Quitclaim for each ROW requested by the CLEC. ~~-~~The ~~estimated pre-paid~~ Field Verification and Quitclaim Preparation ~~f~~Fees shall be billed in advance. ~~Separate Field Verification Fees apply for poles and for manholes.~~[22]

10.8.3.3 Make-Ready ~~Work~~Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for ~~lease~~access. For innerduct ~~leases~~, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, ~~this~~Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW or other circumstances giving rise to such work beyond the simple preparation of one or more Quitclaims. The estimated pre-paid fee shall be billed in advance.[23]

10.8.3.4 Pole Attachment Fee. A fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.[24]

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[21] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[22] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[23] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[24] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis.[25] This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 ~~ROW Access Fee~~Quitclaim Consideration. A pre-paid fee which constitutes consideration for quitclaiming the ROW to CLEC~~is charged for the access, including during any Make-Ready period, to ROW.~~ This fee shall be a one-time (i.e., non-recurring) fee~~annual unless CLEC requests that it be semi-annual.~~[26]

10.8.4 Ordering

~~The Ordering Process has~~There are two (2) steps required before placing an Order for ~~ROW~~ access to Innerduct ~~and~~or Poles~~Attachment~~: Inquiry Review and Field Verification. There is only one step required before obtaining access to ROW: Inquiry Review.[27]~~distinct steps for ROW, Innerduct and Pole Attachment~~:

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ~~request for~~ ROW access, Pole Attachment or Innerduct Occupancy, U S WEST will provide CLEC with ~~a document of General Information for Pole Attachment and Innerduct Occupancy~~ Exhibit D~~along with a description of the application process~~[28] The CLEC will review the documents and provide U S WEST with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on U S WEST owned or controlled Poles, Innerduct and ~~by~~ ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by U S WEST. The CLEC will include the appropriate Inquiry Fee with a completed Attachment 1 ~~B~~A from Exhibit D.[29]~~its inquiry~~.

~~10.8.4.2 Inquiry Reviews~~

10.8.4.1.1 ~~a)~~ Inquiry Review ~~–~~ ~~Innerduct~~Duct/Conduit.[30] U S WEST will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows

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[25] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[26] Colorado Workshop (proposed 7/14/00)~~Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)~~

[27] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[28] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[29] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

[30] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2~~b)~~ Inquiry Review – Poles. U S WEST will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.[31] ~~The U S WEST field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time.~~

10.8.4.1.3 Inquiry Review – ROW. U S WEST shall, upon request of CLEC, provide ~~a copy of ROW agreements (e.g. easements and licenses)~~the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to CLEC within ~~forty-five (45)~~ ten (10) days of the request. U S WEST will provide a copy to CLEC of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owning the real property at issue by an executed Consent To Quitclaim Right Of Access Agreement, which is included in Exhibit D, Attachment 4. U S WEST may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that U S WEST provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this SGAT. U S WEST makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that U S WEST's files contain only the original ROW instruments, and that the current owner of

[31] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop June 21-23, 2000 (proposed)

the fee estate may not be the party identified in the document provided by U S WEST.[32]

10.8.4.~~3~~2 ~~Request – Innerduct~~Field Verification ~~–~~(Poles and ~~,~~Ducts), and Quitclaim Preparation (ROW)~~ and ROW~~. CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or quitclaim preparation for ROW. If field verification or quitclaim preparation is desired, CLEC will sign and return Attachment 1.B of ~~the General Information document~~ Exhibit D along with a check for the ~~estimated verification~~ relevant ~~costs~~fee (Field Verification Fee or Quitclaim Preparation Fee) plus $10.00 per quitclaim as consideration for the quitclaim. Upon payment of the ~~estimated verification~~ relevant ~~costs~~fee and quitclaim consideration, if applicable, U S WEST will provide, as applicable: depending on whether the request is for Poles~~,~~, ~~or~~ Innerd~~D~~uct or ROW: ~~Innerduct and/or ROW, the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required; and from whom;~~ (a) in the case of Poles or Innerduct, a field survey and site investigation of the Poles or D/~~Innerd~~uct ~~or ROW~~, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make~~-r~~Ready costs required to provide Innerduct; the schedule in which the Make~~-r~~Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Quitclaim(s), executed and acknowledged by U S WEST. Upon completion of the Quitclaim(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Quitclaim becomes effective to quitclaim the interest identified in the Quitclaim (if any) to the extent that U S WEST has the right to quitclaim such interest (if any). Any dispute regarding whether a legal agreement conveys ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve U S WEST. In the case of Poles or Innerduct, ~~Such~~ estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2.~~the General Information document and shall be completed within thirty five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between U S WEST and CLEC identified in the Cost Quotation~~. The Attachment 2 quotation shall be valid for ninety (90) calendar days. ~~U S WEST will charge CLEC for field engineer time.~~[33]

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of U S WEST performing same) with the following stipulations: 1) Verifications will be conducted by a U S WEST approved contractor; 2) A U S WEST contractor will

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[32] Colorado Workshop ~~June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (proposed)~~ (proposed 7/14/00)

[33] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)(except for interval) (includes Colorado Workshop language proposed 7/14/00)

monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide U S WEST with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) U S WEST will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available duct/innerduct. CLEC will be charged standard rates for Tactical Planner time.[34]

10.8.4.3 Order – Poles, and ~~Innerduct~~ Ducts. ~~Upon completion of the procedures described above, U S WEST shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates.~~ The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated ~~lease~~recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the ~~Make-Ready~~ fees identified, U S WEST will assign the ~~CLEC's~~ requested space and ~~complete the~~ commence any Make-Ready work which may be required. U S WEST will notify CLEC when Poles/Innerduct are ready. ~~for attachment of facilities~~.[35]

10.8.4.~~5~~4 Estimates of Make-Ready ~~in the Order~~ are used to cover actual Make-Ready costs.[36]

~~However, If~~ if 10.8.4.4.1 If U S WEST requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed estimate. [37]

10.8.4.4.2 Within fifteen (15) business days of a request therefore, U S WEST will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if U S WEST does not possess all such records at the time of the request, then U S WEST will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) ~~thirty (30) calendar days of the completion of Make-Ready~~

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[34] Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)

[35] Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

[36] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

[37] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

~~work.~~calendar days ~~following its receipt of an invoice~~after notification of the completion of Make-Ready work.[38]

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within ~~thirty (30)~~sixty (60) calendar days ~~following receipt of invoice if CLEC~~ after notification of the completion of Make-Ready Work~~of the completion of Make-Ready work~~ if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of U S WEST's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event, later than ninety (90) days following the request for credit.[39]

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, U S WEST denies the request for Poles, Ducts or ROW, upon CLEC request, U S WEST will ~~also~~ refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. ~~If U S WEST denies the Poles/Innerduct, ROW request, U S WEST shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and~~Upon CLEC request, ~~U S WEST will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any, upon request.~~[40] Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or U S WEST's~~U S WEST's~~ receipt of all records relating to the actual costs, whichever comes last, but in no event, later than ninety (90) days following the cancellation or denial.[41]

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[38] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

[39] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink- in WA to verify)

[40] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

[41] Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

10.8.5 Billing

CLEC agrees to pay U S WEST ~~Poles/Innerduct/ROW preparation charges~~the following Fees in advance ~~and usage fees ("Fees") in advance~~ as specified in ~~the Request and Order (~~Attachments 1.A, 1.B ~~-~~and ~~Attachment~~ 2 of Exhibit D~~the General Information Document)~~: Inquiry Fee, Field Verification Fee, Quitclaim Preparation Fee, Make Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Quitclaim Consideration.[42] Make-Ready ~~F~~fees will be computed in compliance with applicable local, state and federal guidelines. ~~Such~~Usage ~~F~~fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual Usage ~~F~~fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual Usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All F~~fees~~~~Such~~~~Usage Fees~~ shall be paid within thirty (30) days following receipt of invoices~~ therefore~~.[43] No ~~F~~fees are ~~not~~ refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both U S WEST and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

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[42] Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

[43] Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

LATE-FILED STATUS REPORT ON ISSUE 3-4 AND REVISED STATEMENT OF QWEST POSITION REGARDING ISSUE 3-14

Qwest Corporation, formerly U S WEST Communications, Inc., ("Qwest") submits this late-filed Status Report on Issue 3-4, which concerns Qwest's process for providing access to rights-of-way (ROW) and its Revised Statement of Qwest's Position Regarding Issue 3-14, which concerns the deadline for responding to large requests for poles, ducts or ROW.[1]

I. Status Report on Issue 3-4

Representatives of Qwest, AT&T, Commission Staff and the Office of Consumer Counsel (OCC) met on August 29, 2000 to attempt to resolve this issue. Progress was made on the parties' major contentions. However, a number of disputed issues remain. This report will describe the agreements reached and the issues that are still in dispute.

A. Agreements

1. Qwest agreed to AT&T's suggestion to change the means of conveyance to a document (called an Access Agreement) rather than a Quitclaim, which Qwest states

will convey access to not only all existing ROW, but also to any additional ROW acquired after the date of the Access Agreement.[2] OCC also agreed to this change, and Staff did not object.

2. Qwest also agreed with AT&T that it was not necessary for CLECs to obtain landowner consent to the terms of the Access Agreement.[3] OCC also agreed to this change, and Staff did not object.

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[1] The Status Report was due September 11, 2000. However, due to a misunderstanding between Qwest and AT&T regarding an effort by AT&T to reserve rights to make new arguments in the future (*see infra* footnote 2), Qwest was unable to make the filing in a timely manner.

[2] *See generally* Attachment 4 to Exhibit D of the SGAT (new versions of section 10.8 and Exhibit D of the SGAT that show the August 29 agreements are attached hereto as Attachments A and B, respectively). Qwest states Attachment 4 to Exhibit D creates a "Bargain and Sale" conveyance under Colorado law. In response to the first draft of this Status Report, AT&T for the first time stated its intent to reserves its right propose further revisions to these documents.

AT&T's position follows: Although certain impasse issues may be readily identified, AT&T believes that closing Checklist Item 3 is premature. AT&T believes that the parties will lose an opportunity to engage in productive conversations in subsequent workshops if they are henceforth foreclosed from discussing ROW issues. AT&T has maintained consistently that ROW issues and subloop issues may affect each other. Further, Qwest stated in the recently held Arizona Emerging Services Workshop that it will introduce additional "field collocation" issues in subsequent workshops. Because these issues have not yet been fully explored, it is difficult to anticipate exactly how these issues might implicate ROW. AT&T believes that foreclosing an opportunity for the parties to discuss ROW issues in these contexts will limit the value of the workshops. Further, AT&T believes that additional revisions to Attachments A and B may be required as a consequence of subsequent discussions on subloop and field collocation. Finally, no party realizes any significant disadvantage in possibly addressing ROW issues in the subsequent workshop. Accordingly, AT&T does not agree that Checklist Item 3 may be closed at this time.

Qwest does not oppose AT&T's reservation of rights to raise new non-Checklist Item 3 issues as to the attached documents, but Qwest also does not necessarily agree that any further revisions to Section 10.8 and Exhibit D will be necessary to ensure 271 compliance. Qwest does, however, oppose AT&T's attempt to raise new issues based on Checklist Item 3 as to the attached documents at a later time. Qwest understood the negotiation session on August 29 was to be the last negotiation session on issue 3-4 (and Checklist Item 3 as a whole), that the August 29 session was for interested parties to raise all issues they had, and that the output of the session was to be a final set of agreed-upon terms and a final set of impasse issues to be briefed by any interested parties to the proceeding. Moreover, Qwest's recollection of AT&T's position at the August 29 session was that, if anything, the future discussions of subloop and collocation might decrease the number of objections AT&T had to the attached documents. Qwest does not recall AT&T ever mentioning on August 29 the possibility that its objections to the attached documents based on Checklist Item 3 might increase. Further, to this date, AT&T has not been able to conjure up an example of a new Checklist Item 3 issue that might arise from discussions of subloop and collocation that could not have been raised in the many months spent on Checklist Item 3. Finally, if

3. In addition, AT&T agreed with Qwest to exclude public ROW from the SGAT.[4] OCC and Staff did not object to this change.

4. Further, Qwest partially agreed to AT&T's proposal to streamline the process of obtaining landowner consent to disclosure of MDU agreements.[5] OCC also agreed to this change, and Staff did not object.

5. Qwest agrees with AT&T that, as to what Qwest considers true ROW agreements (as opposed to MDU agreements) that have been publicly recorded, Qwest will not require landowner consent to disclosure as prerequisite to disclosure to CLECs. Qwest also stated that, as a practical matter, this means that it will not require landowner consent to disclosure of any true ROW agreements. Such disclosure will not be required because Qwest has instituted an internal policy to record any unrecorded "true" ROW agreements that it finds in the course of processing CLEC requests for ROW access.

B. Remaining Disputes

1. Qwest has proposed that all MDU agreements not be disclosed without prior owner consent. AT&T has proposed that MDU agreements be disclosed to CLECs without landowner consent where the MDU agreement does not expressly preclude such disclosure. Qwest and the OCC disagree with AT&T. Qwest and OCC believe that

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AT&T is permitted to raise new issues regarding Checklist Item 3, then undue delay will result, which is indeed a form of prejudice to not only Qwest, but Colorado consumers.

[3] *See* ¶1 of the Consent forms attached to Attachment 4 to Exhibit D of the SGAT.

[4] *See* SGAT section 10.1.3.1.

landowners have a legitimate expectation that these two-party dealings are private.[6] AT&T believes that in the absence of an express prohibition on disclosure, the underlying document may be disclosed. Staff did not take a position.

2. Qwest proposed that CLECs obtain a landowner consent to Qwest's opportunity to cure defaults by CLECs of possible breaches by CLECs of the underlying agreements.[7] AT&T does not agree that Qwest may require CLECs to obtain landowner consent to an opportunity by Qwest to cure breaches by CLECs. Qwest contends that, without such cure opportunity, the breach could cause Qwest to forfeit its ROW and therefore have to purchase new ROW and move its facilities to the new ROW. AT&T contends that (i) the risk management provisions of the SGAT are sufficient protection for Qwest (ii) CLECs are at equal risk to Qwest in that Qwest may likewise default on the underlying obligations and (iii) negotiation of such additional consents to an opportunity to cure will result in unreasonably prolonged and impaired access to ROW. Qwest disagrees because the SGAT risk management provisions merely provide for pursuit of damages (*see* section 5.9.1.1) and cannot be used to prevent the loss of Qwest ROW due to CLEC misbehavior. Moreover, pursuit of damages against some financially unstable CLECs is simply a useless recourse. OCC suggested a case-by-case approach in which Qwest requires such notice and cure consent only if the underlying ROW agreement does not contain a notice and cure clause. Qwest has concerns regarding the efficacy of any notice and cure clauses

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[5] *See* Consent to Disclosure form attached to Attachment 4 to Exhibit D of the SGAT.

[6] *See* SGAT section 10.8.4.1.3.

in the underlying ROW agreements in the situation of subeasement. In other words, a notice and cure clause in the underlying agreement between Qwest and a landowner may not be triggered if the CLEC, not Qwest, causes a breach. Qwest also has concerns about the added difficulties in administration of the process that OCC's suggestion would cause, *e.g.*, attorney review would become necessary in every ROW request. Staff did not state a position on this issue.

3. Qwest has proposed that CLECs record all underlying ROW agreements if a CLEC desires access to such agreement.[8] AT&T has proposed that only access granted to CLECs under those underlying ROW agreement that are recorded in real property records be recorded. AT&T believes that whether or not the interests conveyed by Qwest are real property interests (i) such documents do not necessarily require recordation and (ii) such recordation would, in Qwest's proposal, require recordation of not only the CLEC access agreement but also the underlying instrument, whether or not such instrument had been recorded in the first place. Qwest asserts that real property interests are recorded as a matter of course and good practice and that, if AT&T believes MDU agreements convey real property, then AT&T should treat them as such. OCC and Staff did not state a position on this issue.

4. AT&T suggested the parties defer their disagreements on issue 3-4 until the issue of access to subloops is dealt with in the workshops. AT&T reasoned that its objections under issue 3-4 are most critical in application to access to subloops in an MDU

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[7] *See* ¶ 4 of Consent Regarding Access Agreement form attached to Attachment 4 to Exhibit D of the SGAT.

[8] See ¶ 3.b. of Attachment 4 to Exhibit D of the SGAT.

context. AT&T further noted that if Qwest provides access to subloops that affords AT&T the access required by the Act, many of AT&T's concerns would be resolved. Qwest suggested alternatively that AT&T's objections be briefed on the merits and that any party wishing to defer the issue should so argue in its briefs. This will enable the Commission to decide whether to decide the issue or to keep it open indefinitely.

C. Future Steps

The Commission has set aside twenty minutes at the beginning of the next workshop, commencing on September 19, 2000, for discussion of Issue 3-4. Also, any interested parties wishing to comment in writing on the agreements or disputed issues described in this Status Report is to file comments or a brief on or before September 26, 2000.

II. Revised Statement Of Qwest Position Regarding Issue 3-14

Issue 3-14 was raised by WorldCom regarding deadlines for responding to verification requests pertaining to large amounts of poles, ducts or ROW. As the record currently reflects, WorldCom and Qwest, in the context of the Arizona 271 proceedings, negotiated a schedule in which deadlines lengthened slightly as the size of the request grew. This schedule was contained in section 2.2 of Exhibit D. WorldCom has since disowned that agreement and claimed that all such requests be performed in 35 days.[9] WorldCom based its position on the FCC's decision in *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Co.*, DA 00-1250, File No. PA 99-005,

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[9] Qwest divides the application process into two distinct tasks: inquiry and verification. Qwest allots 10 days to the inquiry process. WorldCom contends that the FCC allows only 45 days to respond to

2000 FCC LEXIS 2933 (June 7, 2000). WorldCom contends that the *Cavalier* case mandates a 45-day deadline for all applications regardless of size.

The *Cavalier* case, however, says no such thing. Rather, it provides that, with respect to large requests, there be a rolling response commencing no later than the 45th day. *Id.* ¶15. In other words, Qwest must approve or deny at least a subset of a large request by the 45th day, and thereafter, Qwest must convey approvals and denials as it determines them rather than saving them up until it makes a determination as to all facilities requested. Qwest is amenable to this approach. Therefore, in an effort to reach closure on this issue, Qwest has revised section 2.2 of Exhibit D to track the language of paragraph 15 of the *Cavalier* order.

CONCLUSION

Qwest hereby provides notice to all parties of the outcome of the negotiations on Issue 3-4 and its revised position on Issue 3-14.

Respectfully submitted,

QWEST CORPORATION

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requests for access, regardless of size. Thus, WorldCom's reasoning would leave only 35 days for verification regardless of the size of the request.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via ~~a Quitclaim without warrantyan~~ Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing telecommunications facilities. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.

10.8.1.4 CLEC Duties –CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to Qwest on rates, terms, and conditions that are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for Qwest to provide service as may be set forth in 47 U.S.C. §251(b)(4), applicable FCC orders and regulations or state rules.

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real property.

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Innerduct Occupancy General Information Document, attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to

construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to Qwest. Upon request, Qwest shall permit CLEC to install Poles/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total

amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Qwest

the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the ~~Quitclaim Right of~~ Access Agreement ~~("Quitclaim")~~ by which Qwest ~~Quitclaim~~ conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the

Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this

SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any ~~Quitclaim~~Access Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

10.8.3 Rate Elements

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to Telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for ROW, Poles and Conduit/Innerduct.

10.8.3.2 Field Verification Fee/~~Quitclaim~~Access Agreement Preparation Fee. In the case of Poles and Innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for Poles and Manholes. In the case of ROW, the ~~Quitclaim~~Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the ~~Quitclaim~~Access Agreement for each ROW

requested by the CLEC. Field Verification and ~~Quitclaim~~Access Agreement Preparation Fees shall be billed in advance.

10.8.3.3 Make-Ready Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for access. For innerduct, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW, or other circumstances giving rise to such work beyond the simple preparation of one or more ~~Quitclaim~~Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 ~~Quitclaim~~Access Agreement Consideration. A pre-paid fee which constitutes consideration for ~~Quitclaiming~~conveying access to the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee.

10.8.4 Ordering

There are two (2) steps required before placing an Order for access to ROW, Innerduct and Pole Attachment: Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Innerduct Occupancy, Qwest will provide CLEC with Exhibit D. CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.

10.8.4.1.1 Inquiry Review – Duct/Conduit. Qwest will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These

materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent ~~to Quitclaim Right of~~Regarding Access Agreement form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.2 Field Verification – Poles Ducts and ~~Quitclaim~~Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or ~~Quitclaim~~Access Agreement preparation for ROW. If field verification or ~~Quitclaim~~Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or ~~Quitclaim~~Access Agreement Preparation Fee) plus $10.00 per ~~Quitclaim~~Access Agreement as consideration for the ~~Quitclaim~~Access Agreement. Upon payment of the relevant fee and ~~Quitclaim~~Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Innerduct or ROW: (a) in the case of Poles or Duct, a field survey and site investigation of the Poles or Duct, including the preparation of distances and drawings, to determine availability of existing Poles/Innerduct; identification of

Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed ~~Quitclaim~~Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the ~~Quitclaim~~Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the ~~Quitclaim~~Access Agreement becomes effective to ~~Quitclaim~~convey the interest identified in the ~~Quitclaim~~Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve Qwest; and/or (c) In the case of Poles or Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Ducts. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not

possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after written notification of the completion of the Make-Ready work.

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

10.8.5 Billing

CLEC agrees to pay the following fees in advance as specified in Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, ~~Quitclaim~~Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and ~~Quitclaim~~Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices. All fees are not refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal

requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

Date General Information Provided by Qwest:_____
General Agreement :_____
BAN Number(must be assigned before processing):_____

REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 7/18/00

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain CLEC's facilities ("Facilities") to Qwest Corporation's ("Qwest") Poles, to place Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to Qwest's private right of way ("ROW"), to the extent Qwest has the right to grant such access. This General Information is necessary to determine if Qwest can meet the needs of the CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.

2. **PROCESS.** The Qwest process is designed to provide the CLEC the information so as to assist CLEC and Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

   2.1 Inquiry Review - Attachment 1.A (Database Search). The CLEC is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the CLEC's Request. Be sure a BAN number is assigned by the Product Manager (call 303-896-3194 or 0789) before sending Attachment 1.A.

   As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route must be sent to the Product Manager while the fee must be sent to the Qwest CLEC Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. Qwest reserves the right to reject illegible or incomplete maps. If CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps. For ROW: Section, Range and Township, to the ¼ section must also be provided.

   Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW ~~Quitclaim~~Access Agreement Preparation Costs Quotation (Attachment 1.B) to the CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Qwest will assign a Field Engineer and provide his/her name and phone number to the CLEC. The Field engineer will check the local database and be available for a joint verification with the CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

   In the case of ROW, Qwest will prepare and return a ROW information matrix and a copy of all publicly recorded agreements listed in the ROW Matrix, within ten (10) days~~.~~. The ROW

Matrix~~which~~ will identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., publicly recorded and non-recorded). The ROW information matrix will also indicate whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

In the case of MDUs, Qwest will prepare and return an MDU information matrix, within ten (10) days, which will identify (a) the owner of the MDU as reflected in Qwest's records, and (b) whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that the original landowner may not be the current owner of the property.

Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC.

If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (~~Quitclaim~~Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the CLEC, Qwest will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the CLEC, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. A copy of the signed Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the CLEC by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the CLEC an executed and acknowledged ~~Quitclaim of Right of~~ Access Agreement to the CLEC in the form attached hereto as Attachment 4 (the "~~Quitclaim~~Access Agreement"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the ~~Quitclaim~~Access Agreement, will be attached to the ~~Quitclaim~~Access Agreement and provided to the CLEC at the time of delivery CLEC of the ~~Quitclaim~~Access Agreement. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Easement Agreement in its possession, the ~~Quitclaim~~Access Agreement will not have a copy of the Easement Agreement attached.

Qwest is required to respond to each Attachment 1.B. submitted by CLEC within 35 days of receiving the Attachment 1.B. To the extent that an Attachment 1.B. includes a large number of poles (greater than 100 poles) or a large amount of conduit, innerduct (greater than 30 manholes) or ROW (greater than 2 linear miles), Qwest is required to approve or deny access commencing no later than 35 days after receiving Attachment 1.B., and Qwest is required to approve or deny access

on a rolling basis, i.e., at the time Qwest determines the propriety of such access to such poles, conduit, innerduct or ROW, so that CLEC is not required to wait until all poles, conduit, innerduct or ROW in a particular Attachment 1.B. are/is approved or denied prior to being granted any access at all. ~~Verification/Quitclaim Preparation work shall be completed within the time frames designated in the table below:~~

~~SIZE OF VERIFICATION REQUEST~~	~~TIME LIMIT (DAYS)~~
~~Less than or equal to 100 poles or 30 manholes or 2 miles of linear ROW~~	~~35~~
~~Less than or equal to 200 poles or 60 manholes or 4 miles of linear ROW~~	~~50~~
~~Less than or equal to 300 poles or 90 manholes or 6 miles of linear ROW~~	~~65~~
~~Less than or equal to 400 poles or 120 manholes or 8 miles of linear ROW~~	~~80~~
~~Less than or equal to 500 poles or 150 manholes or 10 miles of linear ROW~~	~~95~~
~~Greater than 500 poles or 150 manholes or 10 miles of linear ROW~~	~~As Negotiated Between U S WEST and CLEC~~

In the case of ROW, after Qwest has delivered the ~~Quitclaim~~Access Agreement, the CLEC will be required to obtain the property owner's notarized signature on the Consent that is a part of the ~~Quitclaim~~Access Agreement. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the CLEC to obtain a copy of the Easement Agreement. After the CLEC has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the CLEC must record the ~~Quitclaim~~Access Agreement (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, (ii) upon receipt of such Consent, Qwest will provide the CLEC with a copy of the Easement Agreement with the monetary terms redacted, and (iii) the CLEC must then record the ~~Quitclaim~~Access Agreement, together with the Consent and the Easement Agreement, in the real property records for the county in which the property is located; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession, the CLEC (i) must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the ~~quitclaim~~Access Agreement, and (ii) must record the ~~Quitclaim~~Access Agreement (with the Consent and the Easement Agreement or other documentation attached) in the real property records of the county in which the property is located. In any case, recordation of the properly completed, executed and acknowledged ~~Quitclaim~~Access Agreement gives effect to Qwest's ~~quitclaim~~ conveyance of access to Qwest's ROW.

2.3 Poles/Duct Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Qwest will provide the CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the CLEC and applicable payment for the Make-Ready Fees identified, Qwest will assign the CLEC's requested space; Qwest will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Qwest will notify CLEC when Poles/Innerduct are ready for attachment or placement of

Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". Qwest will consider repair or clearing damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The CLEC may contract separately with a Qwest-approved contractor to complete the construction provided a Qwest inspector inspects the work during and after construction. Construction attaching to or entering Qwest-owned structure must conform to Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Qwest agrees to issue to CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the CLEC.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Qwest in determining if Poles/Innerduct space is available to meet the CLEC's request; however, the CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Qwest denies access, Qwest shall do so in writing, specifying the reasons for denial within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the ~~Quitclaim~~Access Agreement. In the event that complications arise with respect to preparing the ~~Quitclaim~~Access Agreement or any other aspect of ~~quitclaiming~~ conveying access to Qwest's ROW, the CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

3. DISPUTE RESOLUTION

3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

ATTACHMENT 1. A
Poles/Innerduct/ or ROW Inquiry Preparation Fee

General Agreement _____
BAN Number (*must be assigned before processing*):_____

Date Submitted:_____ Date Replied to CLEC: _____

CLEC Name_____Contact name:_____
Billing Address: _____
Phone Number:_____ e-mail address:_____
State or location of inquiry:_____

Qwest Account Mgr:_____ Acct Mgr Phone:_____

Poles/Innerduct Permit Database Search Costs Quotation

(One Mile Minimum)	Costs	Est. Miles		Total
1. Pole Inquiry Fee	(see attached pricing chart) X	_____	=	$_____
2. Innerduct Inquiry Fee	(see attached pricing chart) X	_____	=	$_____
3. ROW Records Inquiry	(see attached pricing chart) X	_____	=	$_____

4. Estimated Interval for Completion of Items 1, 2 and/or 3: ___10_____ Days

5. Additional requirements of CLEC: _____

This Inquiry will result in (a) for Poles and Innerduct: a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary ~~Quitclaim~~Access Agreements. For Poles, the name and telephone number of the Field Engineer will be provided so that the CLEC may contact the Qwest Field engineer and discuss attachment plans. If a field verification of poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such Poles/Innerduct.

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

This signed form (original) should be sent with a check for the Inquiry amount ($X per mile) to:
Pam Fisher, Qwest Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112 303-792-6990
A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:
John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202 303-896-0789

ATTACHMENT 1.B

General Agreement No._____
BAN Number:_____

Poles/Innerduct Verification/ROW ~~Quitclaim~~Access Agreement Preparation Costs Quotation

Date Nonrefundable Received: Date Replied to CLEC: _____

NOTE: THIS ATTACHMENT WILL BE COMPLETED BY QWEST AND SENT TO THE CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.

	Estimated Costs	Number	Total Charge
1. Pole Field Verification Fee (10 pole minimum)	_____	_____	$_____
2. Innerduct Field Verification Fee	_____	_____	$_____
3. ~~Quitclaim~~Access Agreement Preparation and Consideration	_____	$___ per ~~Quitclaim~~Access Agreement	$_____

4. Estimated Interval for Completion of Items 1, 2 and/or 3: _____ Working Days

5. Additional requirements of CLEC: _____

Comments: _____

By signing below and providing payment of the Total Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its field survey/preparation of ~~Quitclaim~~Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such ROW/Poles/Innerduct. The CLEC acknowledges the above costs are estimates only and CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

A copy of this form signed form should be sent to:
John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202

The original signed form should be sent with a check for the verification amount to:
Pam Fisher, Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112

SCHEDULE A—PRICING CHART

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

Inquiry and Verification, Poles and Ducts

STATE	POLE INQUIRY** per mile	DUCT INQUIRY per mile	POLE VERIFICATION per pole	DUCT VERIFICATION per manhole
AZ	$ 326.04	$ 391.91	$ 36.21	$ 470.74
CO	$ 366.42	$ 440.45	$ 40.70	$ 529.04
ID	$ 323.69	$ 389.09	$ 35.95	$ 467.35
IA	$ 346.86	$ 416.94	$ 38.52	$ 500.80
MN	$ 343.05	$ 412.36	$ 38.10	$ 495.30
MT	$ 328.81	$ 395.24	$ 36.52	$ 474.74
NE	$ 340.10	$ 408.81	$ 37.77	$ 491.03
NM	$ 337.43	$ 405.60	$ 37.48	$ 487.18
ND	$ 316.08	$ 379.94	$ 35.10	$ 456.36
OR*	$ 317.43	$ 381.54	$ 35.26	$ 458.26
SD	$ 334.10	$ 401.60	$ 37.11	$ 482.37
UT	$ 354.72	$ 426.39	$ 39.40	$ 512.15
WA*	$ 290.03	$ 348.63	$ 32.21	$ 418.75
WY	$ 330.87	$ 397.72	$ 36.75	$ 477.71

* ordered rates by the state commission.
** Rates for Right of Way (ROW) are under development

Unauthorized Attachments

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.
Utah, Idaho, Washington: Unauthorized attachment charges will be $200.00 per pole or innerduct segment between manholes.
All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3 or section 10.8.2.22 of the SGAT.

SCHEDULE B—Access Rates

RATES BY STATE

STATE	POLE per pole, per foot per year	DUCT ———per foot per year
AZ	$4.29	$ 0.36
CO	$2.49	$ 0.30
ID	$3.56	$ 0.25
IA	$2.77	$ 0.19
MN	$2.12	$ 0.22
MT	$2.62	$ 0.32
NE	$2.73	$ 0.28
NM	$3.06	$ 0.33
ND	$6.01	$ 0.33
OR*	$4.36	$ 0.44
SD	$4.09	$ 0.28
UT	$2.46	$0.33
WA*	$2.98	$ 0.38
WY	$0.74	$ 0.27

* ordered rates by the state commission.

** Utah Law governs Pole attachment and Conduit Rates. At present (7/26/00) Qwest has tariffed Pole attachment rates for cable companies which is also available for telecommunication carriers through 2/8/01. No conduit rate has been established by the Utah PUC-- the rate shown here is determined by the FCC formula.

ATTACHMENT 2
Poles/Innerduct Order General Agreement _____
BAN Number:_____

NOTE: THIS FORM WILL BE COMPLETED BY QWEST AND SENT TO CLEC FOR SIGNATURE
Make-ready Work required: Yes ( ) No ( ) Date Received_____

If Yes is checked, estimated Make-ready costs: $ _____

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - _____.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, CLEC must:

a. provide Qwest representative, a final design of splice, racking and slack locations in Qwest utility holes.
b. tag all equipment located in/on Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. Pole Attachment, Per Pole	$ _____/	_____	$_____
2. Innerduct Occupancy, Per Foot	$ _____	_____	$_____
Total Annual Recurring Charges			$_____

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you do not place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO_____ (/DAY * DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER_____

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the CLEC desires Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which Qwest offers such Poles/Innerduct. By signing this document you are agreeing to the access described herein.

Return this signed form and check to: Pam Fisher, **Qwest CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112.** Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

		Qwest Corporation
Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

ATTACHMENT 3

General Agreement:_____

QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS

This is an Agreement between _____ ("CLEC") and Qwest Corporation ("Qwest"), for one or more Orders for the CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to Qwest's Poles and/or placement of Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.,* an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

1. SCOPE.

1.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.

1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by CLEC or to obtain any ROW for CLEC's use.

1.3 Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. TERM. Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the ~~Quitclaim~~Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

3. TERMINATION WITHOUT CAUSE.

3.1 To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may

have been accruing at the time of termination, including indemnity, warranties, and confidential information.

3.3 If Qwest terminates this Agreement for Cause, or if CLEC terminates this Agreement without Cause, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Qwest to remove its Facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

3.4 If this Agreement or any Order is terminated for reasons other than Cause, then CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed.

3.5 Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the CLEC. Upon abandonment of Poles/Innerduct, and with the concurrence of the other CLEC(s), if necessary, CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

4. CHARGES AND BILLING.

4.1. CLEC agrees to pay Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.

4.2. Qwest has the right to revise Fees, at its sole discretion, upon written notice to CLEC within at least sixty (60) days prior to the end of any annual billing period.

5. INSURANCE. The CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars ($100,000.00) for each accident.

5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this

coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars ($1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

5.4 Qwest may require the CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Qwest shall be borne by Qwest, and the CLEC shall arrange to have such costs billed separately and directly to Qwest by the insuring carrier(s). Qwest shall be authorized by the CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a hole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.

5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Qwest. The CLEC shall forward to Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to Qwest; (3) certification that underground hazard overage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The CLEC shall not commence work hereunder until the obligations of the CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the CLEC of any liability hereunder or in any way modify the CLEC's obligations to indemnify Qwest.

5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars ($6,000,000.00). In addition, said policy shall name Qwest and the CLEC/SubCLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.

6.1 Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Qwest spare conduit include the placement of innerduct, Qwest retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before CLEC's Facilities can be accommodated, the cost of such modification will be included in the CLEC's nonrecurring charges for the associated Poles/Innerduct Order.

6.2 CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Qwest does not warrant or represent that providing CLEC with access to the Poles/Innerduct in any way constitutes such legal right. The CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the CLEC's sole expense, in order to perform its obligations under this Agreement. The CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The CLEC shall comply with all conditions of rights-of-way and Orders.

6.3 CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to Qwest upon written request. CLEC shall within thirty (30) days comply and provide the requested information to Qwest to bring their facilities into compliance with these terms and conditions.

6.4. In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.

6.5 In the event of an infrastructure outage, the CLEC should contact their Network Maintenance Center at 1-800-223-7881 or the CLEC may contact their Account Manager at the Interconnect Service Center.

7. MODIFICATION TO EXISTING POLES/INNERDUCT.

7.1. If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the CLEC and Qwest determines in its sole discretion to provide the requested capacity, the CLEC shall pay Qwest the total replacement cost, Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction

fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Qwest. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and CLEC shall be responsible for its pro rata share of the modification cost. Except as set forth herein, CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of Qwest shall be provided to CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not rearrange its facilitates within sixty (60) days after receipt of written notice from Qwest requesting such rearrangement, Qwest may perform or cause to have performed such rearrangement and CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

8. **INSPECTION OF FACILITIES**. Qwest reserves the right to make final construction, subsequent and periodic inspections of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. CLEC shall provide written notice to Qwest, at least fifteen (15) days in advance, of the locations where CLEC's plant is to be constructed.

8.2. The CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Qwest within five (5) business days of the date(s) of the occupancy.

8.3. Qwest shall provide written notification to CLEC within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by Qwest has been completed, CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct system, unless Qwest has provided CLEC a written extension to comply. CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, Qwest shall perform such corrections and CLEC shall pay Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken my be made by Qwest.

8.5. Once the CLECs facilities occupy Qwest Poles/Innerduct system and Exhibit A has been received by Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that CLEC has failed to comply with the provisions set forth in this Agreement, in which case the CLEC shall reimburse Qwest for full costs of inspection, and re-inspection to determine compliance as required. A CLEC representative may accompany Qwest on field

inspections scheduled specifically for the purpose of inspecting CLEC's Facilities; however, CLEC's costs associated with its participation in such inspections shall be borne by CLEC. Qwest shall have no obligation to notify CLEC, and CLEC shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the CLEC within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Qwest, and shall not relieve CLEC of any responsibilities, obligations, or liability arising under this Agreement.

9. UNAUTHORIZED FACILITIES

9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, Qwest, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars ($200.00) per attachment per Pole or innerduct run between manholes, and require the CLEC to submit in writing, within ten (10) day after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, the CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, Qwest may remove the CLEC's facilities without liability, and the cost of such removal shall be borne by the CLEC.

9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not CLEC is ordered to continue the occupancy of the Poles/Innerduct system.

9.3. No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Qwest of any of its rights of privileges under this Agreement or otherwise.

10. REMOVAL OF FACILITIES. Should Qwest, under the provisions of this Agreement, remove CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Qwest will deliver the Facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If payment is not received by Qwest within thirty (30) days, CLEC will be deemed to have abandoned such facilities, and Qwest may dispose of said facilities as it determines to be appropriate. If Qwest must dispose of said facilities, such action will not relieve CLEC of any other financial responsibility associated with such removal as provided herein. If CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Qwest for previous occupancy have been paid in full. CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by CLEC," each as attached hereto, advising Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

11. INDEMNIFICATION AND LIMITATION OF LIABILITIES. CLEC shall indemnify and hold harmless Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been

caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the CLEC; (2) actual or alleged fault or negligence of the CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by CLEC under this Contract or any product liability claims relating to any material supplied by CLEC under this Contract; (4) failure of CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation. including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the CLEC. If both Qwest and the CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the CLEC, if Qwest desires. Qwest shall give the CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the CLEC's request and at the CLEC's expense all information and assistance available to the Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CLEC, AND THE CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF QWEST WHEN CONCURRENT WITH THAT OF THE CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

12. FORCE MAJEURE

12.1 The CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, Qwest may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Qwest after the contingency occurs. With respect to Qwest's election of Section 12.2.3 above:

12.3.1 Qwest shall give the CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 Qwest shall be excused from its performance if prevented by acts or events beyond the Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The CLEC acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which CLEC shall remain fully liable.

15. **SEVERABILITY**. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

16. **GENERAL PROVISIONS**.

16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

16.2 This Agreement shall not be assignable by CLEC without the express written consent of Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by CLEC to CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that CLEC must obtain Qwest's consent in any event.

16.3 This Agreement benefits CLEC and Qwest. There are no third party beneficiaries.

16.4 This Agreement constitutes the entire understanding between CLEC and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

CLEC	Qwest Corporation
_____	_____
Signature	Signature
_____	JOHN CARVETH
Name Typed or Printed	Name Typed or Printed
_____	PRODUCT MANAGER
Title	Title
_____	_____
Date	Date

Address for Notices	Address for Notices
	Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202
Contact: Phone: FAX:	Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022

EXHIBIT A

PULLING IN REPORT

This report is to be completed by the CLEC when fiber cable is placed into innerduct.

_____20____

Send to:
E. Skinner, Qwest Corp
6912 S. Quentin St, Suite 201
Englewood, CO 80112

This is to advise you that pursuant to General Agreement No. _____ granted to us under the terms of the Innerduct Agreement dated _____, 20__ we have completed installation of the following cable into the following ducts.

Municipality

Location

From	To	Cable and
Manhole at	Manhole at	Equipment Installed

_____
Name of CLEC

By:_____
Title:_____

Receipt of the above report is hereby acknowledged_____, 20__.

Qwest Corporation

By:_____
Title:_____

1. Reports shall be submitted in duplicate.

2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.

3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit ___, unless a change has been previously authorized in writing by Licensor.

EXHIBIT B

CLEC:_____

NOTIFICATION OF SURRENDER OR MODIFICATION
OF CONDUIT OCCUPANCY ORDER BY CLEC

Return to:
E. Skinner, Qwest Corp
6912 S. Quentin, Suite 201
Englewood, CO 80112

In accordance with the terms and conditions of this Agreement between us, dated _____, 20__, notice is hereby given that the licenses covering occupancy of the following conduit are surrendered (and/or modified as indicated in Licensee's prior notification to Licensor, dated _____, 20__) effective _____.

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED

_____
Name of Licensor

_____
Name of Co- Provider

_____
Date Notification Received

By_____

_____
Date Modification Accepted

Title_____

By _____
Discontinued:

Total duct footage_____

EXHIBIT C

NOTIFICATION OF SURRENDER OR MODIFICATION
OF POLE ATTACHMENT ORDER BY CLEC

CLEC:_____

Return to:
E. Skinner, Qwest Corp
6912 S. Quentin, Suite 201
Englewood, CO 80112

In accordance with the terms and conditions of the Agreement between Qwest and CLEC, dated _____,20__, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in CLEC's prior notification to Qwest, dated _____, 20__) effective _____.

	POLE NO.	ASSOC. POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			

Date Notification Received _____
Date Modification Received_____

_____
By:_____

_____
Name of CLEC

Discontinued:
Poles_____
Anchors_____

By:_____

Anchor/Guy Strands_____Its:_____

_____

ATTACHMENT 4
FORM OF ~~QUITCLAIM RIGHT OF~~ ACCESS AGREEMENT

After recording, please return to:

E. Skinner
Qwest Joint Use Group PDR, Suite 201
6912 S Quentin, Englewood, CO 80112

~~QUITCLAIM RIGHT OF~~ ACCESS AGREEMENT

THIS ~~QUITCLAIM RIGHT OF~~ ACCESS AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2000, by and between **QWEST CORPORATION**, a Colorado corporation, successor in interest to **U S WEST COMMUNICATIONS, INC.**, a Colorado corporation ("Grantor"), whose address is _____, and _____, a _____, whose address is _____ ("Grantee").

RECITALS

A. This Agreement relates to certain real property (the "Property") located in the County of _____ (the "County"), State of _____ (the "State").

B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").

C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.

D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to ~~quitclaim~~ convey to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such ~~quitclaim~~ conveyance.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby ~~quitclaims~~ conveys to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights ~~quitclaimed~~ conveyed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Consent by Owner. Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. Recordation of Agreement. Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a _____, duly formed and validly existing under the laws of the State of _____. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation can be observed or performed by Grantor.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the

"Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on

Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

[Signature pages follow]

EXECUTED as of the date first written above.

GRANTOR:

Witnessed by: _____

QWEST CORPORATION, a Colorado corporation,
successor in interest to
U S WEST COMMUNICATIONS, INC.,
a Colorado corporation

By:_____
Name:_____
Title:_____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of QWEST CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

EXECUTED as of the date first written above.

GRANTEE:

Witnessed by: _____ _____, a _____

By:_____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public
My Commission Expires:

_____

CONSENT ~~TO QUITCLAIM RIGHT OF~~REGARDING ACCESS AGREEMENT

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the terms of the following paragraphs regarding the foregoing ~~Quitclaim Right of~~ Access Agreement (the "Agreement")~~, as required therein~~. This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

~~1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee.~~

~~2.~~ Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the Right of Way Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Right of Way Agreement as set forth in Section ~~4~~3 of this Consent and the right to bind Owner to grant the notice and cure period as set forth in Section ~~5~~4 of this Consent.

~~3~~2. Owner's Acknowledgments. Owner expressly acknowledges that (a) Owner has received and reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect Owner's rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner's attorney; (c) the Agreement, with this Consent attached, will be recorded in the real property records of the County and will become a public record, and Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement and the Right of Way Agreement confidential; and (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a telecommunications carrier, as defined in ~~4~~72 U.S.C. § 224, such as Grantee.

~~4~~3. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner's alleged right to confidentiality relating to the Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

~~5~~4. Notice and Cure Period. Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such default within thirty (30) days after notice, or, if such default cannot reasonably be cured in such 30-day period, Grantor shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Owner further agrees not to invoke any of its remedies, either express or implied, under the Right of Way Agreement, unless such default shall remain uncured following such notice and grace period.

~~6~~5. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____,
a _____

By:_____
Name:_____
Title:_____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____
Notary Public

My Commission Expires:

_____

CONSENT TO DISCLOSURE

THE UNDERSIGNED, _____, a _____ ("Owner"), whose address is _____, hereby consents to the terms of the following paragraphs regarding the attached MDU Agreement (the "Agreement").

FOR TEN DOLLARS ($10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

1. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Agreement attached hereto or, if no description of the Property is given in the Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights, if any, under the Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Agreement as set forth in Section 3 of this Consent.

2. Owner's Acknowledgments. Owner expressly acknowledges that (a) this is a legal document that may affect Owner's rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner's attorney; and (b) Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement confidential.

3. Owner's Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner's alleged right to confidentiality relating to the Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Agreement, and acknowledges that Owner has no right to provide copies of such Agreements to any party unless Owner has completely deleted the dollar amounts.**

4. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

EXECUTED as of the date first written above.

OWNER:

_____,

a _____

By: _____
Name: _____
Title: _____

STATE OF _____)
_____) ss:
COUNTY OF _____)

The foregoing Consent was acknowledged before me this ___ day of _____, 2000, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

(SEAL)

_____

_____

Notary Public

My Commission Expires:

_____

EXHIBIT 1

Right of Way Agreement

(This represents the ROW agreement between the Co-Provider and the property owner)

ATTACHMENT: SGAT COMPARISON

Reciprocal Compensation

7.3.1 Interconnection Facility Options

The Reciprocal Compensation Provisions of this Agreement shall apply to the exchange of Exchange Service (EAS/Local) traffic between CLEC's network and Qwest's network. Where either Party acts as an IntraLATA Toll provider, each Party shall bill the other ~~symmetrical rates using Qwest's Tariffed Switched Access~~the appropriate charges pursuant to its respective Tariff or ~~rates as a surrogate.~~ Price Lists. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs, Price Lists or contractual offerings for such third party terminations. Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

7.3.1.1 *Entrance Facilities*

7.3.1.1.1 Recurring and nonrecurring rates for Entrance Facilities are specified in Exhibit A and will apply for those DS1 or DS3 facilities dedicated to use by LIS.

7.3.1.1.2 If CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs, the rates from those Tariffs will apply.

7.3.1.1.3 If the Parties elect to establish LIS two-way trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way facilities shall be shared among the Parties by reducing the LIS two-way EF rate element charges as follows:

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor of ~~50%~~fifty percent (50%) for a minimum of one quarter. The nominal charge to the other Party for the use of the Entrance Facility (EF), as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other ~~Party~~party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for ~~non-Internet Related Traffic~~non-Internet Related traffic to substantiate a change in that factor. If either Party demonstrates with non-Internet ~~related~~Related data that actual minutes of use during the first quarter justify a relative use factor other than ~~50%,~~fifty percent (50%), the Parties will retroactively ~~true-up~~true up first quarter charges. Once negotiation of a new factor is finalized, the bill reductions and payments will apply going forward, for a minimum of one quarter. By agreeing to this interim

solution, ~~the parties do~~Qwest does not waive ~~their~~its position that Internet Related Traffic or traffic delivered to Enhanced Service Providers is interstate in nature.

7.3.1.2 Collocation

7.3.1.2.1 When Collocation is used to facilitate Interconnection, the EICT rate elements, as specified in Exhibit A, will apply per DS1 and DS3. For an interconnection trunk path through collocated equipment, EICT provides that portion of the physical facility between Collocated equipment and Qwest's equipment located elsewhere within the Qwest building. Collocation and Direct Connection is described in Section 8 of this Agreement. Interconnection Tie Pairs (ITP) are associated with unbundled element provisioning, and not LIS. ITP is described more fully in Section 9 of this Agreement.

7.3.1.2.2 The provider of the Collocation EICT will share the cost of the LIS two-way EICT by assuming a relative use factor of fifty percent (50%) for a minimum of one quarter. The nominal charge to the other Party for the use of the EICT, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-Internet Related traffic to substantiate a change in that factor. If either Party demonstrates with non-Internet Related data that actual minutes of use during the first quarter justfy a relative use factor other than fifty percent (50%), the Parties will retroactively true up first quarter charges. Once negotiation of a new factor is finalized, the bill reductions and payments will apply going forward, for a minimum of one quarter. By agreeing to this interim solution, Qwest does not waive its position that Internet Related Traffic or traffic delivered to Enhanced Service Providers is interstate in nature.

7.3.2 Direct Trunked Transport

7.3.2.1 Either~~Party may elect to~~provision one-way trunks to the ~~other Party's end office for the termination of traffic.~~7.3.2.2 ~~Either~~ Party may elect to purchase Direct Trunked Transport from the other Party.

7.3.2.1.1 Direct Trunked Transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's tandem or end office switches. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated ~~DS3 or DS1~~DS3, DS1 or DS0 facilities.

7.3.2.1.2 When DTT is provided to a local or access tandem for Exchange Service (EAS/local traffic), or to an access tandem for Exchange Access (IntraLATA Toll), or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire

Center and the tandem. Additional rate elements for delivery of traffic to the terminating end office are Tandem Switching and Tandem Transmission. These rates are described below.

7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/access tandem or end office.

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

~~(a)~~7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one quarter. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non Internet related ~~Traffic~~traffic to substantiate a change in that factor. If either Party demonstrates with ~~non-Internet-related~~non Internet Related data that actual minutes of use during the first quarter justify a relative use factor other than fifty percent (50%), the Parties will retroactively ~~true-up~~true up first quarter charges. Once negotiation of new factor is finalized, the bill reductions and payments will apply going forward, for a minimum of one quarter. By agreeing to this interim solution, ~~the parties do~~Qwest does not waive ~~their~~its position that ~~traffic delivered to Enhanced Service Providers~~Internet related traffic is interstate in nature.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

7.3.3 Trunk Nonrecurring charges

7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.

7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half the rates specified in Exhibit A.

7.3.4 Exchange Service (EAS/Local) Traffic

7.3.4.1 End Office Call Termination

7.3.4.1.1 The per minute of use call termination rates as described in Exhibit A of this Agreement will apply reciprocally for Exchange Service (EAS/Local) traffic terminated at a Qwest or CLEC end office.

7.3.4.1.2 For purposes of call termination, the CLEC switch(es) shall be treated as end office switch(es), unless CLEC's switch(es) meet the definition of a Tandem Switch in this Agreement ~~at Section 4.11.2~~

7.3.4.1.3 As set forth above, the Parties agree that reciprocal compensation only applies to EAS/Local Traffic and further agree that the FCC has determined that Internet ~~related traffic~~Related Traffic originated by either Party (the "Originating Party") and delivered to the other Party, (the "Delivering Party") is interstate in nature. Consequently, the Delivering Party must identify which, if any, of this traffic is EAS/Local Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be EAS/Local Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.

7.3.4.1.4 Neither Party shall be responsible to the other for call termination charges associated with third party traffic that transits such Party's network.

7.3.4.2 Tandem Switched Transport

7.3.4.2.1 For traffic delivered through a Qwest or CLEC local tandem switch (as defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above, so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if CLEC or Qwest only switches the traffic once and this switch meets the definition of a tandem switch in ~~Section 4.11.2,~~the Definitions Section, then only the tandem switching rate shall apply.

7.3.4.2.2 Mileage shall be measured for the tandem transmission rate elements based on V&H coordinates between the~~local~~ tandem and terminating end office.

7.3.4.2.3 When ~~CLEC~~a Party terminates traffic to a~~Qwest~~ remote ~~office,~~switch, tandem transmission rates will be applied for the V & H mileage between the ~~Qwest host office and the Qwest remote office.~~host switch and the remote switch when the identity of each is filed in the NECA 4 Tariff.

7.3.4.2.4 When Qwest receives a unqueried call from CLEC to a number that has been ported to another Qwest Central Office within the EAS/Local calling area, and Qwest performs the query, mileage sensitive tandem transmission rates will apply which reflect the distance to the end

office to which the call has been ported.

7.3.4.2.4.1 To determine the responsible originating carrier of unqueried calls for purposes of identification of the carrier to billed LNP query charges, Qwest and CLEC are required to utilize the Number Portability Administration Center (NPAC) database, or another database that is supported by OBF.

7.3.5 Miscellaneous Charges

7.3.5.1 Cancellation charges will apply to cancelled LIS trunk orders, based upon the critical dates, terms and conditions ~~described in Access Service Tariff,~~in accordance with the Arizona Access Service Tariff Section 5.2.3, and the Trunk Nonrecurring Charges referenced in this Agreement.

7.3.5.2 Expedites for LIS trunk orders are allowed only on an exception basis with~~Qwest~~ executive approval within the same timeframes as ~~Qwest provides~~provided for other designed services. When expedites are approved, expedite charges will apply to LIS trunk orders based on rates, terms and conditions described in Exhibit A.

7.3.5.3 Construction charges are described in Exhibit A of this Agreement.

7.3.6 ~~Exchange Access (IntraLATA Toll) Traffic. Applicable Qwest Switched AccessTariff rates apply to IntraLATA toll traffic routed to an access tandem, or directly to an end office.~~Reserved for Future Use.

7.3.7 Transit Traffic.

The following rates will apply:

7.3.7.1 Local ~~Transit: The~~Transit:: the applicable LIS tandem switching and tandem transmission rates at the assumed mileage contained in Exhibit A of this Agreement, apply to the ~~originatingParty~~originating Party. The assumed mileage will be modified to reflect actual mileage, where the mileage can be measured, based on negotiations between the Parties.

7.3.7.2 IntraLATA Toll Transit: The applicable Qwest Tariffed Switched Access tandem switching and tandem transmission rates apply to the originating CLEC or LEC. The ~~rates~~assumed mileage contained in Exhibit A of this Agreement shall apply.

7.3.7.3. Jointly Provided Switched Access: The applicable Switched Access rates will be billed by the Parties to the IXC based on MECAB guidelines and each Party's respective FCC and state access Tariffs.

7.3.8 Signaling Parameters

Qwest and CLEC are required to provide each other the proper signaling information (*e.g.,* originating call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion. All CCS signaling parameters will be provided including Calling Party Number (CPN), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored. If ~~either Party~~CLEC fails to provide CPN ~~or reasonable alternative (e.g., charge-to-number),~~(valid originating information), and cannot substantiate technical restrictions (*i.e.,* MF signaling) such traffic will be billed as Switched Access. Traffic sent to CLEC without CPN (valid originating information) will be handled in the following manner. ~~Transiting~~The transit provider will be responsible for only its portion of this traffic, which will not exceed more than ~~5%~~(5%) of the total Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll) traffic delivered to the other ~~Party~~ party. Qwest will provide to CLEC, upon request, information to demonstrate that Qwest's portion of no-CPN traffic does not exceed five percent (5%) of the total traffic delivered.

7.3.9 To the extent a Party combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, the originating Party, at the terminating party's request will declare quarterly PLU(s). Such PLU's will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. The terminating Party should apportion per minute of use (MOU) charges appropriately.

9.13 Access to Signaling

9.13.1 Description

9.13.1.1 Qwest will provide CLEC with non-discriminatory access to signaling networks, including signaling links and Signaling Transfer Points (STP), call-related databases and service management systems (SMS) on an unbundled basis. The individual call-related databases and associated SMS are addressed later in ~~(STP).~~this Section of the Agreement. Access to Qwest's signaling network provides for the exchange of signaling information between Qwest and CLEC necessary to exchange traffic and access~~call-~~ call-related databases. Signaling networks enable CLEC the ability to send SS7 messages between its switches and Qwest's switches, and between CLEC's switches and those third party networks with which Qwest's signaling network is connected. CLEC may access Qwest's signaling network froma CLEC switch via unbundled signaling and unbundled signaling transport elements between CLEC's switch and Qwest STPs. CLEC may access Qwest's signaling network from each of its switches via a signaling link pair between its switch and the Qwest STPs. CLEC may make such connection in the same manner as Qwest connects one of its own switches to STPs. Access to Qwest's signaling network for purposes of interconnection and the exchange of traffic is addressed earlier in this Agreement. The Common Channel Signaling used by the ~~parties~~Parties shall be Signaling System 7.

9.13.1.2 Common Channel Signaling Access Capability/Signaling System 7 (CCSAC/SS7) provides multiple pieces of signaling information via the SS7 network. This signaling information includes, but is not limited to, specific information regarding calls made on associated Feature Group D trunks and/or LIS trunks, Line Information Database (LIDB) data, Local Number Portability (LNP), Custom Local Area Signaling

Services (CLASS), 8XX set up information, Call Set Up information and transient messages.

9.13.1.3 Optional Features of CCSAC/SS7 are dependent on specific CLEC design requirements as well as the existence of adequate transport facilities. Transport facilities must be in place to accommodate Call Set Up of related Feature Group D and/or LIS messages, transient messages, and other ancillary services (*e.g.,* LIDB data and 8XX set up information).

9.13.2 Terms and Conditions

9.13.2.1 All elements of the unbundled CCSAC/SS7 arrangement will be developed on an individual case basis based on CLEC's design requirements. All of CLEC's unbundled design elements are subject to facility requirements identified below.

9.13.2.2 At a minimum, transport facilities must exist from CLEC's Poirt of Presence or Signaling Point of Interface (SPOI) to the identified Qwest STP location. Unbundled transport facilities to accommodate CCSAC/SS7 signaling may be developed using unbundled network elements (UNEs) as defined in this Section ~~Section 9~~.

9.13.2.3 CLEC's CCSAC/SS7 design requirements will include, but are not limited to:

9.13.2.3.1 STP Port - This element is the point of termination to the signal switching capabilities of the STP. Access to a Qwest STP Port is required at a DS0 level.

9.13.2.3.2 Specific Point Code detail including the identification of CLEC's Originating, Destination and Signaling Options (*i.e.,* ISDN User Part [ISUP] or Transaction Capabilities Application Part [TCAP] requirements).

9.13.2.3.3 All signaling routing requirements will be identified in CLEC's design. CLEC will provide industry standard codes identifying Qwest end offices, tandems, sub-tending end offices and STPs that will be included in the designed unbundled signaling arrangement.

9.13.2.4 The CCSAC/SS7 unbundled arrangement must meet the following requirements:

9.13.2.4.1 Both Qwest and CLEC are obligated to follow existing industry standards as described in Bellcore documents including but not limited to GR-905 CORE, GR-954-CORE, GR-394-CORE and~~Qwest~~ Technical Publication 77342.

9.13.2.4.2 CLEC's switch or network SS7 node must meet industry and Qwest certification standards.

9.13.2.4.3 Unbundled transport facilities as identified in this Section9 of ~~this~~the Agreement must be provisioned at a minimum DS1 capacity at CLEC's Point of Presence or SPOI. This facility must be exclusively used for the transmission of network control signaling data.

9.13.2.4.4 Calling Party Number (CPN), or a reasonable alternative (i.e., charge number) will be delivered by ~~CLEC~~each Party to the other, Qwest in accordance with FCC requirements, when received from another carrier or from the telephone equipment of the end user.

9.13.2.4.5 Carrier Identification Parameter (CIP) will be delivered by CLEC to Qwest in accordance with industry standards, where technically feasible.

9.13.2.4.6 Provisions relating to call related databases (*i.e.*, 8XX, LIDB, Advanced Intelligent Network (AIN), etc.) are contained in other Sections of this Agreement. For example, LNP is described in ~~Section 10.2, AIN in Section 9.14, LIDB in Section 9.15, 8XX in Section 9.16, and ICNAM in Section 9.17.~~the Ancillary Section, AIN, LIDB, 8XX and ICNAM are described in the UNE Section.

9.13.3 ~~———~~Rate Elements

Rates and charges for the unbundled CCSAC/SS7 elements will be assessed based on CLEC's specific design requirements. Both nonrecurring and monthly recurring rates may be applicable. Message rating applies to ~~all messages~~each terminating call set up request (ISUP) traversing the Qwest signaling network. Messages which are transient in nature~~(notdestined for Qwest databases)~~ will be assessed message rates per terminating call set-up requests. Transient database messages (not destined for Qwest) will be assessed rating on a per transient database request (TCAP). Pricing detail is provided in Exhibit A of this Agreement. Rate elements for unbundled CCSAC/SS7 elements are: The highlighted language is new language.

9.13.3.1 Nonrecurring Rates. CCSAC Option Activation Charge – Assessed for adding or changing a point code in the signaling network. Qwest will charge CLEC based upon its selection of either basic or database activation, as detailed in Exhibit A of this Agreement.

9.13.3.2 Recurring Rates

9.13.3.2.1 STP Port - a monthly recurring charge, per connection into the STP.

9.13.3.2.2 Signal Formulation Charge - a per terminating call set up request charge for formulating the ISUP message at a SS7 SP/SSP.

9.13.3.2.3 Signal Transport Charge - a per terminating call set up request or data request charge for the transmission of signaling data between the~~local~~ STP and an end office SP/SSP. This rate element includes separate charges for ISUP and transient TCAP messages.

9.13.3.2.4 Signal Switching Charge - a per terminating call set up request or data request charge for switching an SS7 message at the local STP. This rate element includes separate charges for ISUP and transient TCAP messages.

The highlighted language is new.

9.13.4 Ordering

9.13.4.1 CCSAC/SS7 unbundled CLEC-designed elements will initially require design information from CLEC. Ordering for CCSAC/SS7 will be handled on an individual basis, using service activation meetings between CLEC and Qwest. CLEC will provide a Translation Questionnaire, Link Data Sheet and ASR during the service activation meetings.

9.13.4.2 Qwest will provide jeopardy notification, Design Layout Reports (DLR), Completion Notification and Firm Order Confirmation (FOC) in a non-discriminatory manner.

9.13.4.3 Due date intervals for CCSAC/SS7 will be established on an individual case basis.

9.13.5 ~~———~~Maintenance and Repair

The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC cross connections will be repaired by CLEC and Qwest cross connections will be repaired by Qwest. Maintenance and Repair processes are contained in~~Section 12 of~~ this Agreement.

9.14 AIN Services

9.14.1 Description

AIN services are offered and available as an enhancement to CLEC's SS7 capable network structure and operation of AIN Version 0.1 capable switches.

9.14.1.1 AIN Customized Services (ACS) - Allows CLEC to utilize Qwest's AIN service application development process to develop new AIN services or features. ACS is determined on an individual case basis. The elements are also combined on an individual case basis to meet CLEC's request. Services developed through the ACS process can either be implemented in Qwest's network or handed off to CLEC to be installed in its own network.

9.14.1.2 AIN Platform Access (APA) - This service allows CLEC to provide to its end users any AIN service that is deployed for CLEC utilizing the ACS process in Qwest's SCP. Qwest is responsible for the provisioning of these AIN services. CLEC will be able to populate data for provisioning of the Call Processing Records (CPRs) stored in the SCP for AIN services. The process to provision, modify or update information in the AIN databases is predominately manual.

9.14.1.3 AIN Query Processing (AQP) - TCAP queries are used to collect information from the AIN database for use in call processing of the AIN based services above. CLEC launches a query from an AIN capable switch over the SS7 network to the Qwest Signal Transfer Point (STP). This query is directed to Qwest's SCP to collect data for the response to the originating switch.

9.14.2 Terms and Conditions

9.14.2.1 AIN Customized Services (ACS) - Since each proposed service is unique and complex, when ACS is ordered, Qwest conducts a feasibility study which estimates the amount of time and cost necessary to develop the proposed service or enhancement. The charges associated with the feasibility analysis, development and implementation shall be established pursuant to the BFR process as described in ~~Section 17.~~this Agreement. The service is developed and tested in a Qwest lab environment. If the service is implemented in Qwest's network, it goes through network test prior to implementation.

9.14.2.2 AIN Platform Access (APA)

9.14.2.2.1 Prior to activation of the AIN feature, CLEC's switch point code must be activated for AIN processing on the CCSAC/SS7 link (described in ~~Section 9.13)~~this Section) that is transporting the AIN query.

9.14.2.2.2 Qwest will provide requirements for data load preparation and delivery by CLEC.

9.14.2.2.3 In order to make AAOS service work, service logic must be loaded in the AIN application to provision an AIN service on the platform for CLEC. Qwest is responsible for provisioning the Call Processing Record (CPR) in the SCP.

9.14.2.2.4 Each end user line must be provisioned by the facility owner. CLEC is responsible for setting the AIN trigger in its switch.

9.14.2.2.5 AIN Query Processing. Qwest will certify and test~~the~~ CLEC switch for AIN message transmission to assure quality performance as described in ~~Section 9.13.~~this Section. Qwest and CLEC will test cooperatively.

9.14.3 Rate Elements

9.14.3.1 AIN Customized Services (ACS). Hourly rates are applicable for each component of the ACS service according to the estimates determined in the feasibility analysis. The specific charges for each component and the terms and conditions for payment shall be described in the BFR response described above.

9.14.3.2 AIN Platform Access (APA). APA is billed a monthly recurring and a one-time nonrecurring charge for each AIN feature activated, per telephone number.

9.14.3.3 AIN Query Processing. The AIN service rates will be developed and assessed in accordance with the specific service requested by CLEC.

9.14.4 Ordering

9.14.4.1 ACS is ordered on an individual case basis and is coordinated through the Qwest ~~account manager and product manager.~~Account Manager and Product Manager. Due date intervals for the proposal phase are detailed below:

~~a) Within five (5)~~(a) Within five business days of an inquiry, Qwest will provide CLEC with the Service Request Form.

~~b) Within ten~~(b) Within ten (10) business days of receiving the Service Request, Qwest will provide a written acknowledgment of receipt.

(c) Within fifteen (15) business days of acknowledgment, Qwest will assess the Service Request and prepare for a meeting with CLEC to review the Service Request.

(d) Qwest will be available to attend a Service Request Meeting within five~~(5)~~ business days of the completion of the assessment. The Service Request will be considered accepted once Qwest and CLEC come to an agreed-upon understanding of the service feature set and scope.

(e) Within thirty (30) business days of acceptance of the Service Request, Qwest will provide a response, the Service Evaluation, which includes an initial service evaluation and development time and cost estimates.

(f) Within ninety (90) business days of end-user approval of the Service Evaluation, Qwest will complete a Feasibility Analysis, which includes development time and costs.

Remaining deliverables are negotiated with CLEC so that mutually-agreeable due dates based on service complexity are established.

9.14.4.2 APA is ordered using the LSR form.

9.14.4.3 In the event that miscellaneous charges apply, they will be applied consistent with the application used for equivalent services ordered by Qwest end users.

9.14.4.4 Upon receipt of a complete and accurate LSR, Qwest will load CLEC records into the AIN database within ten days. Qwest will also establish translations at the STP to allow query access from CLEC switch within ten days.

9.14.4.5 Completion notification will be either by e-mail or by fax.

9.14.4.6 AIN Query Processing (AQP) – is specific to the service ordered and must be established at the time of the APA ordering process.

9.15 Interconnection to Line Information Database (LIDB)

9.15.1 Line Information Database (LIDB) Storage

9.15.1.1 Description -- LIDB Storage

9.15.1.1.1 Line Information Database (LIDB) stores various telephone

line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The operator services system accesses LIDB data to provide originating line (calling number), billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, billing or service restrictions and the sub-account information to be included on the call's billing record.

9.15.1.1.2 ~~Bellcore's~~Telcordia GR-446-CORE defines the interface between the administration system and LIDB including specific message formats ~~(Bellcore's~~(Telcordia's TR-NWP-000029, Section 10).

9.15.1.2 Terms and Conditions -- LIDB Storage

CLEC will provide initial data, add, update or delete data, and license said data to Qwest for placement in Qwest's LIDB. CLEC will provide and maintain necessary information to enable Qwest to provide LIDB services. CLEC will ensure, to the extent possible, the accuracy of the data provided to Qwest for storage in Qwest's LIDB, and supply updated and changed data in a timely manner.

9.15.1.3 **Rate Elements -- LIDB Storage**

LIDB Data Storage does not have a recurring charge. When electronic access becomes available, a one-time non-recurring fee may be charged for the initial load of CLEC's data into LIDB.

9.15.1.4 **Ordering -- LIDB Storage**

Qwest will be responsible for loading and updating CLEC's line records into the LIDB database from the data provided by CLEC. The establishment of CLEC line records will be provisioned through an interim manual process. Updates, adds, changes and deletions subsequent to the initial file for establishment must be e-mailed to Qwest. Emergency updates (adds, changes, deletes) may be faxed. CLEC is responsible for the accuracy of the data which is sent to Qwest. Inquiries from CLEC must be faxed to Qwest using the approved forms appropriate for the type of inquiry requested.

9.15.2 Line Validation Administration System (LVAS) Access

9.15.2.1 Description -- LVAS Access

9.15.2.1.1 LVAS is the comprehensive administrative management tool which loads the LIDB data and coordinates line record updates in Qwest's redundant LIDB databases. LVAS is the vehicle which audits stored information and assures accurate responses.

9.15.2.1.2 LVAS access is available only to facility-based CLECs.

9.15.2.2 Terms and Conditions -- LVAS Access

9.15.2.2.1 CLEC will provide Qwest with the following information:

a) The LIDB service requested (*i.e.*, calling name, calling cards, Originating Line Number Screening (OLNS), ABS, etc.);

b) CLEC's Revenue Accounting Office (RAO), Operating Customer Number (OCN), and/or Local Service Provider Identification (LSPI);

c) The NPA NXX and signaling point codes for the operator or end office switches from which queries are launched;

d) The identity of CLEC's SS7 provider for Number Portability, ABS, OLNS and calling name;

e) The identity of CLEC's operator services provider for ABS queries;

f) A forecast for changes in volumes of line records, both increases and decreases; and

g) The contact names and fax numbers of all CLEC personnel to be contacted for fraud notification and LIDB data administration.

9.15.2.2.2 CLEC will e-mail to Qwest all updates, adds, changes, and deletions to the initial file in ASCII format.

9.15.2.2.3 Within one business day of receipt of the file, Qwest will attempt to load the file into LVAS. If Qwest successfully loads the file into LVAS, the originator of CLEC's files will be notified by Qwest.

9.15.2.2.4 In the event that Qwest is not successful in loading the file because errors were detected, Qwest will e-mail the file back to CLEC with an error notice.

9.15.2.2.5 Reserved for ~~future use.~~Future Use.

9.15.2.2.6 Qwest will provide to CLEC the necessary methods and procedures when the LVAS electronic interface becomes available.

9.15.2.3 Rate Elements -- LVAS Access

9.15.2.3.1 LIDB Line Record Initial Load Charge - CLEC shall reimburse Qwest for all charges Qwest incurs relating to the input of CLEC's end user line record information, including the formatting of data so that it may be loaded into LVAS.

9.15.2.3.2 Mechanized Service Account Update - LVAS Access is the product which allows CLEC to add, update and delete telephone line

numbers from the Qwest LIDB for CLEC's end users. Qwest will charge CLEC for each addition or update processed.

9.15.2.3.3 Individual Line Record Audit - CLEC may verify the data for a given ten (10) digit line number using an inquiry of its end user data.

9.15.2.3.4 Account Group Audit - CLEC may audit an individual Account Group NPA-NXX.

9.15.2.4 Expedited Request Charge for Manual Updates - CLEC may request an expedited manual update to the LIDB database that requires immediate action (*i.e.*, deny PIN number). Qwest shall assess CLEC an expedited request charge for each manual update.

9.15.2.5 Ordering - LVAS Access.

LVAS report queries from CLEC must be faxed to Qwest MIDAS center using the approved forms appropriate for the type of inquiry requested.

9.15.2.6 Billing - Line Validation Administration System (LVAS) Access.

When electronic access becomes available, a per query rate may apply to each Mechanized Service Account Update, Individual Line Record Audit, Account Group Audit, and Expedited Request Charge for Manual Updates.

9.15.3 LIDB Query Service

9.15.3.1 Description - LIDB Query Service

9.15.3.1.1 LIDB Query Service provides information to query originators for use in processing Alternately Billed Services (ABS) calls. ABS call types include calling card, billed to third number, and collect calls.

9.15.3.1.2 On behalf of CLEC, Qwest will process LIDB queries from query originators (Telecommunications Carriers) requesting CLEC telephone line number data. Qwest allows LIDB query access through Qwest regional STPs.

9.15.3.2 Terms and Conditions - LIDB Query Service

9.15.3.2.1 All LIDB queries and responses from operator services systems and end offices are transmitted over a CCS network using a Signaling System 7 (SS7) protocol (TR-NWT-000246, Bell Communications Research Specification of Signaling System 7).

9.15.3.2.2 The application data needed for processing LIDB data are formatted as Transaction Capabilities Application Part (TCAP) messages. TCAP messages may be carried as an application level protocol using SS7 protocols for basic message transport.

9.15.3.2.3 The SCP node provides all protocol and interface support.

CLEC SS7 connections will be required to meet Bellcore's GR905, TR954 and Qwest's Technical Publication 77342 specifications.

9.15.3.2.4 Qwest will include CLEC-provided data in Qwest's LIDB in accordance with section 9.15.1 (LIDB Storage), and allow access to the data subject to Qwest negotiated agreements with Telecommunications Carriers, allowing CLEC's end users the same benefits of said agreements as enjoyed by Qwest end users. Qwest will update CLEC data, as requested by CLEC. Qwest will perform services provided hereunder and determine the applicable standard for the data, in accordance with operating methods, practices and standards in ~~effect.~~effect. Qwest shall exercise reasonable efforts to provide accurate and complete LIDB information in Qwest's LIDB.

9.15.3.3 Rate Elements - LIDB Query Service

9.15.3.3.1 The recurring charges for LIDB queries for Alternately Billed Services (ABS) calls processed by an Operator Services Switch are contained in Exhibit A of this Agreement.

9.15.3.3.2 LIDB Query rates apply in addition to all applicable CCSAC charges.

9.15.3.4 Ordering - LIDB Inquiry Service

9.15.3.4.1 LIDB requires a connection to the Common Channel Signaling Network (CCSN). Therefore, CLEC must have Common Channel Signaling Access Capability (CCSAC).

9.15.3.4.2 Provisioning of LIDB is done via the LIDB Access Request Form. Upon receipt of an accurate LIDB Access Request Form, Qwest will complete all necessary work and service will be available within seven (7) business days.

9.15.3.4.3 In addition to the LIDB Request Form, hub providers requesting LIDB services on behalf of ~~end-users~~CLEC must furnish Qwest a Proof of Authorization to prove that they have ~~end-user~~CLEC authorization to provide these services. This letter must be on file prior to provisioning.

9.15.4 Fraud Alert Notification

9.15.4.1 Description - Fraud Alert Notification

The Watch Dog Fraud Management System (FMS) processes the LIDB query detail records to establish patterns and identify potential fraudulent situations. Watch Dog issues an alert to the Qwest Fraud Investigation Unit (FIU). Qwest will notify CLEC of system alerts on CLEC end user lines.

9.15.4.2 Terms and Conditions - Fraud Alert Notification

Qwest will notify CLEC of system alerts on CLEC end user lines. At the direction of CLEC, Qwest will institute a block to prevent any further occurrence of fraud or uncollectible toll charges in accordance with practices used by Qwest for its own end users. Such practices include, but are not limited to, removing from valid data those data which incur fraud or uncollectible toll charges.

9.15.4.3 Rate Elements - Fraud Alert Notification

Fraud Alert Notification will be billed on a time and material basis per alert.

9.15.4.4 Ordering - Fraud Alert Notification

As part of the planning for LIDB Data Storage, CLEC will provide Qwest a contact for fraud notification. The contact must be available 24 hours a day, 7 days a week. Qwest will not take any action when fraud notification is received other than to notify CLEC. CLEC may request that Qwest deny a calling card. Any request of this type must be followed up by a fax as a confirmation.

9.16 8XX Database Query Service

9.16.1 8XX Database Query Service is an originating service which provides the Carrier Identification Code (CIC) and/or the vertical features associated with the 8XX number. Call routing information in the SMS/800 Database reflects the desires of the owner of the 8XX number as entered in the SMS/800 by its chosen responsible organization.

9.16.2 8XX Optional Features

9.16.2.1 POTS Translation - Delivers the ten-digit Plain Old Telephone Service (POTS) number to CLEC. To determine that the call originated as an 8XX number, the trunk group must be provisioned with Automatic Number Identification (ANI). ANI digit 24 will be delivered to the trunk group.

9.16.2.2 Call Handling and Destination Features - This will allow routing options by specifying a single carrier, multiple carriers, single termination or multiple terminations. Multiple terminations may require the POTS translation feature. Variable routing options are:

a) Routing by originating NPA-NXX-XXXX;

b) Time of day;

c) Day of week;

d) Specified date; and

e) Allocation by percentage.

9.16.3 Rate Elements

9.16.3.1 The recurring charges for 8XX Database Query Service, POTS

Translation, and Call Handling and Destination Features are contained in Exhibit A of this Agreement.

9.16.3.2 The rates for 8XX Database Query Service only apply to queries from CLEC's switch to the Qwest 8XX Database. If CLEC routes 8XX traffic to Qwest for delivery to an interexchange carrier, the call shall be handled as jointly provided switched access. If CLEC routes such traffic to Qwest without performing the query, Qwest shall perform the query in accordance with its switched access Tariff.

9.16.3.3 Non-recurring Options Activations Charge will apply for CLEC to activate 8XX Database Query Service. These rate elements are contained in the CCSAC/SS7 section of Exhibit A.

9.16.4 Ordering Process

9.16.4.1 CLEC shall order access to Qwest local STP (links and ports) prior to or in conjunction with 8XX Database Query Service.

9.16.4.2 The information and time intervals to order STP (links and ports) are contained in the Common Channel Signaling Capability/SS7 Section of this Agreement. STP links and ports are required with 8XX Database Query Service.

9.16.4.3 8XX Database Query Service shall be provided within ~~thirty (30)~~30 days after CLEC has access to the Qwest local STP.

9.16.5 Technical Requirements

9.16.5.1 Qwest shall make Qwest's Toll Free Number Database available, through its STPs, for CLEC to query from CLEC's designated switch.

9.16.5.2 The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a Qwest switch.

9.16.6 Interface Requirements

The signaling interface between CLEC's or other local switch and the Toll-Free Number Database shall use the TCAP protocol as specified in the technical references together with the signaling network interface.

9.16.7 Technical References

SCPs/Databases shall be consistent with the following technical references:

9.16.7.1 GR-246-CORE, Bell Communications Research Specification of Signaling System Number 7, Issue 1 (Bellcore, December 1994);

9.16.7.2 GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP) (Bellcore, March 1994);

9.16.7.3 GR-954-CORE, CCS Network Interface Specification (CCSNIS) Supporting Line Information Database (LIDB) Service 6, Issue 1, Rev. 1

(Bellcore, October 1995);

9.16.7.4 GR-1149-CORE, OSSGR Section 10: System Interfaces, Issue 1 (Bellcore, October 1995) (Replaces TR-NWT-001149);

9.16.7.5 GR-1158-CORE, OSSGR Section 22.3: Line Information Database 6, Issue (Bellcore, October 1995); and

9.16.7.6 WGR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service (Bellcore, May 1995).

10.3 911/E911 Service

10.3.1 Description

10.3.1.1 911 and E911 provides an end user access to the applicable emergency service bureau, where available, by dialing a 3-digit universal telephone number (911).

10.3.1.2 Automatic Location Identification/Data Management System (ALI/DMS). The ALI/DMS database contains end user information (including name, address, telephone number, and sometimes special information from the local service provider or end user) used to determine to which Public Safety Answering Point (PSAP) to route the call. The ALI/DMS database is used to provide more routing flexibility for E911 calls than Basic 911.

10.3.1.3 Basic 911 directly connects to the PSAP all 911 calls from one or more local exchange switches that serve a geographic area. E911 provides additional selective routing flexibility for 911 calls. E911 uses end user data, contained in the ALI/DMS, to determine to which Public Safety Answering Point (PSAP) to route the call.

10.3.2 Terms and Conditions

10.3.2.1 E911 functions provided to CLEC shall be at the same level of accuracy and reliability as for such support and services that Qwest provides to its end users for such similar functionality.

10.3.2.2 In counties where Qwest has obligations under existing agreements as the primary provider of the 911 system to the county, CLEC will participate in the provision of the 911 System as described in Section 10.3.

10.3.2.3 Qwest shall conform to all state regulations concerning emergency services.

10.3.2.4 Qwest shall route E911 calls to the appropriate PSAP.

10.3.2.5 Each Party will be responsible for those portions of the 911 system for which it has total control, including any necessary maintenance to each Party's portion of the 911 system.

10.3.2.6 Qwest will provide CLEC with the identification of the Qwest 911 controlling office that serves each geographic area served by CLEC.

10.3.2.7 Qwest will provide CLEC with the ten-digit telephone numbers of each PSAP agency, for which Qwest provides the 911 function, to be used by CLEC to acquire emergency telephone numbers for operators to handle emergency calls in those instances where CLEC's end user dials "0" instead of "911". It shall be the responsibility of CLEC to verify or confirm the appropriate use of the contact information provided by Qwest with each PSAP prior to offering 911 calls or publication of such data.

10.3.2.8 If a third party is the primary service provider to a county, CLEC will negotiate separately with such third party with regard to the provision of 911 service to the county. All relations between such third party and CLEC are separate from this Agreement and Qwest makes no representations on behalf of the third party.

10.3.2.9 If CLEC is the primary service provider to the county, CLEC and Qwest will negotiate the specific provisions necessary for providing 911 service to the county and will include such provisions in an amendment to this Agreement.

10.3.2.10 CLEC will separately negotiate with each county regarding the collection and reimbursement to the county of applicable end user taxes for 911 service.

10.3.2.11 CLEC is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard of Qwest for the 911 call delivery.

10.3.2.12 The Parties shall provide a single point of contact to coordinate all activities under this Agreement.

10.3.2.13 Neither Party will reimburse the other for any expenses incurred in the provision of E911 services. All costs incurred by the Parties for 911/E911 services shall be billed to the appropriate PSAP.

10.3.2.14 Qwest's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. CLEC shall have non-discriminatory unbundled access to the E911 database, including the listings of other LECs for purposes of providing 911 services related to the public health, safety and welfare.

10.3.3 E911 Database Updates

10.3.3.1 CLEC exchanges to be included in Qwest's E911 Database will be indicated via written notice to the appropriate 911 authority (state agency or PSAP administrator) and will not require an amendment to this Agreement.

10.3.3.2 Qwest's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. Qwest, or its designated database provider, will provide to CLEC an initial copy of the most recent Master Street Address Guide ("MSAG"), and subsequent versions on a quarterly basis, at no charge. MSAGs provided outside the quarterly schedule will be provided and charged on an individual case basis. The data will be provided in computer readable format. Qwest shall provide CLEC access to the Master Street and Address Guide at a level of accuracy and reliability that is equivalent to the access Qwest provides to itself.

10.3.4 E911 Database Updates for Facilities-Based CLECs

10.3.4.1 Qwest will ensure that the 911 database entries for CLEC will be maintained with the same accuracy and reliability that Qwest maintains for Qwest's own end-users.

10.3.4.2 For selective routing table updates, facilities-based CLECs will negotiate directly with Qwest's database provider for the input and validation of end user data into the Qwest Automatic Location Identification ("ALI") database. CLEC will negotiate directly with the PSAP (or PSAP agency's) DMS/ALI provider for input of end user data into the ALI database. In most cases the selective routing table updates and the ALI database will be managed by the same provider. CLEC assumes all responsibility for the accuracy of the data that CLEC provides for MSAG preparation and E911 Database operation.

10.3.4.3 If it is facilities-based, CLEC will provide end user data to Qwest's agent for the Qwest ALI database utilizing NENA-02-001 Recommended Formats For Data Exchange, NENA-02-002 Recommended Standard For Street Thoroughfare Abbreviations and NENA-02-003 Recommended Protocols For Data Exchange. Qwest will furnish CLEC any variations to NENA recommendations required for ALI database input.

10.3.4.4 If it is facilities-based, CLEC will provide end user data to Qwest's database provider for Qwest's ALI database that is MSAG valid and meets all components of the NENA-02-004 Recommended Measurements For Data Quality.

10.3.4.5 If it is facilities-based, CLEC will update its end user records provided to Qwest's database provider for Qwest's ALI database to agree with the 911 MSAG standards for its service areas.

10.3.5 E911 Database Updates for Resale Based CLECs

10.3.5.1 For resold services, Qwest, or its designated database provider, will provide updates to the ALI database in a manner that is at the same level of accuracy and reliability as such updates are provided for Qwest's end-users. For resold accounts, CLEC shall provide Qwest with accurate end-user location information to be updated to the ALI/DMS database. Qwest shall use its current process to update and maintain end user information in the ALI/DMS database.

10.3.6 E911 Database Accuracy

10.3.6.1 E911 Database accuracy shall be measured jointly by the PSAPs and Qwest's database provider in a format supplied by Qwest. The reports shall be forwarded to CLEC by Qwest's database provider when relevant and will indicate incidents when incorrect or no ALI data is displayed. The reports provided to CLEC shall contain CLEC-specific information regarding CLEC's accounts.

10.3.6.2 Each discrepancy report will be jointly researched by Qwest and CLEC. Corrective action will be taken immediately by the responsible Party.

10.3.6.3 Each Party providing updates to the E911 database will be responsible for the accuracy of its end user records. Each Party providing updates specifically agrees to indemnify and hold harmless the other Party from any claims, damages, or suits related to the accuracy of end user data provided for inclusion in the E911 Database.

10.3.6.4 Qwest and ~~the third party administrator (SCC)~~its vendor will provide non-discriminatory error correction for records submitted to the Automatic Location Identification (ALI) database. For resold accounts, if ~~SCC~~vendor detects errors, it will attempt to correct them. If~~SCC~~vendor is unable to correct the error, ~~SCC~~vendor will contact Qwest for error resolution. For errors referred to Qwest, Qwest will provide the corrections in a non-discriminatory manner. If Qwest is unable to resolve the error, Qwest will contact the Resale-CLEC for resolution. In the case of facility-based CLECs, the ~~third party administrator, SCC,~~vendor will interface directly with the CLEC to resolve record errors.

10.3.7 E911 Interconnection

10.3.7.1 If required by CLEC, Qwest shall interconnect direct trunks from CLEC's network to the Basic 911 PSAP, or the E911 tandem. Such trunks may alternatively be provided by CLEC. If provided by Qwest, such trunks will be provided on a non-discriminatory basis. Qwest shall provide special protection identification for CLEC 911 circuits in the same manner as Qwest provides for its 911 circuits.

10.3.7.1.1 The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Qwest 911/E911 selective router (i.e., 911 Tandem Office) that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs ("911 Interconnection Trunk Groups"). CLEC can order diverse routing for 911/E911 circuits, if facilities are available. When Qwest facilities are available, Qwest will comply with diversity of facilities and systems as ordered by CLEC. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Qwest shall make that alternate routing available to CLEC.

10.3.7.1.2 911 Interconnection Trunk Groups must be, at a minimum, DS-0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration must use Centralized Automatic Message Accounting ("CAMA") type signaling with MF tones

that will deliver Automatic Number Identification "ANI" with the voice portion of the call, or Signaling System 7 ("SS7") if available (i.e., other signaling technology as available). All 911 Interconnection trunk groups must be capable of transmitting and receiving Baudot code necessary to support the use of Telecommunications Devices for the Deaf ("TTY/TDDs").

10.3.7.1.3 Qwest shall begin restoration of 911/E911 trunking facilities immediately upon notification of failure or outage. Qwest must provide priority restoration of trunks or network outages on the same terms and conditions it provides itself. CLEC will be responsible for the isolation, coordination, and restoration of all 911 network maintenance problems to the CLEC demarcation. Qwest will be responsible for the coordination and restoration of all 911 network maintenance problems beyond the demarcation. Qwest repair service includes testing and diagnostic service from a remote location, dispatch of or in-person visit(s) of personnel. Where an on-site technician is determined to be required, a technician will be dispatched without delay. CLEC is responsible for advising Qwest of the circuit identification when notifying Qwest of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. Qwest will refer network trouble to CLEC if no defect is found in Qwest's network. The Parties agree that 911 network problem resolution will be managed in an expeditious manner at all times.

10.3.7.2 For CLEC-identified 911 trunk blockages, Qwest agrees to take corrective action using the same trunking service procedures used for Qwest's own E911 trunk groups.

10.3.7.3 The Parties will cooperate in the routing of 911 traffic in those instances where the ALI/ANI information is not available on a particular 911 call.

10.3.7.4 For a facility-based CLEC, Qwest shall provide 911 ~~Interconnection,~~interconnection, including the provision of dedicated trunks from CLEC end office switch to the 911 control office, at parity with what Qwest provides itself.

10.3.7.5 For a reseller CLEC, or a CLEC using unbundled switching, Qwest shall provide CLEC with access to the same 911 trunks used for Qwest's retail end-users which extend from the Qwest end office switch to the Basic 911 PSAP or the E911 tandem. CLEC access to such 911 trunks shall be on a shared, non-discriminatory basis.

10.3.8 E911 and Number Portability

10.3.8.1 When a Qwest telephone number is ported out, the receiving CLEC shall be responsible to update the ALI/DMS database. When a CLEC telephone number is ported in, Qwest shall be responsible to update the ALI/DMS database.

10.3.8.2 When Remote Call Forwarding (RCF) is used to provide number portability to the end user and a remark or other appropriate field information is available in the database, the shadow or "forwarded-to" number and an indication that the number is ported shall be added to the end user record by CLEC.

10.4 White Pages Directory Listings

10.4.1 Description

White Pages Listings Service (Listings) consists of Qwest placing the names, addresses and telephone numbers of CLEC's end users in Qwest's listing database, based on end user information provided to Qwest by CLEC. Qwest is authorized to use CLEC end user listings as noted below.

10.4.2 Terms and Conditions

10.4.2.1 CLEC will provide in ~~standard,~~standard format, by mechanized ~~format, and~~or by manual transmission to Qwest, its primary, premium, and privacy listings. Qwest will accept~~at no charge~~, one primary listing for each main telephone number belonging to ~~CLEC's end users. Primary listings are defined in Qwest general exchange Tariffs.~~CLEC's end users at no charge.

10.4.2.2 CLEC will be charged for premium and privacy listings (e.g., additional, foreign, cross reference) at Qwest's General Exchange listing Tariff rates, less the wholesale discount, as described in Exhibit A. Primary listings and other types of listings are defined in the Qwest General Exchange Tariffs.

10.4.2.3 Information on submitting and updating listings is available in "Qwest Facility Based and CLEC Listings User Documents." Qwest will furnish CLEC the listings format specifications. Directory publishing schedules and deadlines will be provided to CLEC.

10.4.2.4 If CLEC provides its end users' listings to Qwest, CLEC grants Qwest ~~a non-exclusive license to incorporate~~access to CLEC's end user listings information ~~into its directory assistance database.~~solely for use in its Directory Assistance List Service, except as provided in Section 10.4.2.5, and subject to the terms and conditions of this Agreement. Qwest will incorporate CLEC's end user listings into the directory assistance database. Qwest will incorporate CLEC's end user listings information in all existing and future directory assistance applications developed by Qwest. Should Qwest cease to be a telecommunications carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.

10.4.2.5 CLEC end user listings will be treated the same as Qwest's end user listings. ~~No prior authorization~~Prior written authorization from CLEC, which authorization may be withheld, shall be required for Qwest to sell, make available, or release CLEC's end user listings to directory publishers, or other third parties other than directory assistance ~~providers, or other third parties.~~providers. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's end user directory assistance listings

to directory assistance providers. Listings shall not be provided or sold in such a manner as to segregate end users by carrier. Qwest will not charge CLEC for updating and maintaining ~~its~~Qwest's listings databases. CLEC will not receive compensation from Qwest for any sale of listings by Qwest as provided for under this Agreement.

10.4.2.6 To the extent that state Tariffs limit Qwest's liability with regard to listings, the applicable state Tariff(s) is incorporated herein and supersedes the Limitation of Liability section of this Agreement with respect to listings only.

10.4.2.7 Qwest is responsible for maintaining listings, including entering, changing, correcting, rearranging and removing listings in accordance with CLEC orders.

10.4.2.8 Qwest provides non-discriminatory appearance and integration of white pages listings for all CLEC's and Qwest's end users. All requests for white pages directory listings, whether CLEC or Qwest end users, follow the same processes for entry into the listings database.

10.4.2.9 Qwest will take reasonable steps in accordance with industry practices to accommodate nonpublished and nonlisted listings provided that CLEC has supplied Qwest the necessary privacy indicators on such listings.

10.4.2.10 CLEC white pages listings will be in the same font and size as listings for Qwest end-users, and will not be separately classified.

10.4.2.11 Qwest processes for publication of white pages directory listings will make no distinction between CLEC and Qwest subscribers. CLEC listings will be provided with the same accuracy and reliability as Qwest's end user listings. Qwest will ensure CLEC listings provided to Qwest are included in the white pages directory published on Qwest's behalf using the same methods and procedures, and under the same terms and conditions, as Qwest uses for its own end user listings.

10.4.2.12 Qwest shall ensure its third party publisher distributes appropriate alphabetical and classified directories (white and yellow pages) and recycling services to CLEC end-users at parity with Qwest end users, including providing directories a) upon establishment of new service; b) during annual mass distribution; and c) upon end-user request.

10.4.2.13 CLEC shall use commercially reasonable efforts to ensure that listings provided to Qwest are accurate and complete. All third party listings information is provided AS IS, WITH ALL FAULTS. CLEC further represents ~~and warrants the end user~~that it shall review all listings information provided to~~Qwest is accurate and correct.10.4.2.14 CLEC further represents and warrants that it has reviewed all listings provided to~~ Qwest, including end user requested restrictions on use, such as nonpublished and ~~nonlisted.~~nonlisted restrictions.

10.4.2.14 Reserved for Future Use.

10.4.2.15 CLEC shall be solely responsible for knowing and adhering to state laws or rulings regarding listings~~(e.g., no solicitation requirement in the state of Arizona)~~, and for supplying Qwest with the applicable listing information.

10.4.2.16 CLEC agrees to provide to Qwest its end user names, addresses and telephone numbers in a standard mechanized format, as specified by Qwest.

10.4.2.17 CLEC will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide Qwest the means of identifying listings ownership.

10.4.2.18 ~~Upon request by Qwest, CLEC shall submit proof to Qwest of authorization from each end user for which CLEC submits a change in end user's listing.~~Prior to placing listings orders on behalf of end users, CLEC shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"), as set forth in Section 5.3 of this Agreement.

10.4.2.19 Qwest will provide monthly listing verification proofs that provide the data to be displayed in the published white pages directory and available on directory assistance. Verification proofs containing nonpublished and nonlisted listings are also available upon request on the same monthly schedule.

10.4.2.20 Qwest will provide CLEC a reasonable opportunity to verify the accuracy of the listings to be included in the white pages directory and directory assistance.

10.4.2.21 CLEC may review and if necessary edit the white page listings prior to the close date for publication in the directory.

10.4.2.22 CLEC is responsible for all dealings with, and on behalf of, CLEC's end users, including:

10.4.2.22.1 All end user account activity (*e.g.,* end user queries and complaints);

10.4.2.22.2 All account maintenance activity (*e.g.,* additions, changes, issuance of orders for listings to Qwest);

10.4.2.22.3 Determining privacy requirements and accurately coding the privacy indicators for CLEC's end user information (if end user information provided by CLEC to Qwest does not contain a privacy indicator, no privacy restrictions will apply); and

10.4.2.22.4 Any additional services requested by CLEC's end users.

10.4.2.23 Pursuant to Sec. 222 (a), (b), (c), (d), and (e) of the Telecommunications Act, ~~U SWEST~~Qwest will provide subscriber lists information gathered in Qwest's capacity as a provider of local exchange service on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms and conditions to CLEC upon request for the purpose of publishing directories in any format. Rates may be subject to federal or state laws or rules, as appropriate. Upon request by CLEC, Qwest shall enter into negotiations with

CLEC for CLEC's use of subscriber list information for purposes other than publishing directories, and Qwest and CLEC will enter into a written contract if agreement is reached for such use.

10.4.2.23.1 Qwest shall use commercially reasonable efforts to ensure that its retail end user listings provided to CLEC are accurate and complete. Any third party listings are provided AS IS, WITH ALL FAULTS. Qwest further represents that it shall review all its retail end user listings information provided to CLEC including end-user requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.4.2.24 Qwest represents and warrants that any arrangement for the publication of white pages directory listings with an affiliate (including, without limitation, Qwest Dex, Inc.) (an "Affiliate"), requires such Affiliate to publish the directory listings of CLEC contained in Qwest's listings database so that CLEC's directory listings are non-discriminatory in appearance and integration, and have the same accuracy and reliability that such Affiliate provides to Qwest's end users.

10.4.2.25 Qwest further agrees that any arrangements for the publication of white pages directory listings with an Affiliate shall require such Affiliate to include in the customer guide pages of the white pages directory, a notice that end users should contact their local service provider to request any modifications to their existing listing or to request a new listing.

10.4.2.26 Qwest agrees that any arrangement with an Affiliate for the publication of white pages directory listings shall require such Affiliate to provide CLEC space in the customer guide pages of the white pages directory for the purpose of notifying customers how to reach CLEC to: (1) request service; (2) contact repair service; (3) dial directory assistance; (4) reach an account representative; (5) request buried cable local service; and (6) contact the special needs center for customers with disabilities.

10.4.3 Rate Elements

The following rate elements apply to White Pages Listings and are contained inExhibit A of this Agreement.

10.4.3.1 Primary Listings; and

10.4.3.2 Premium/Privacy Listings.

10.4.4 Ordering Process

10.4.4.1 Qwest provides training on white page listings requests and submission processes. The ordering process is similar to the service ordering process.

10.4.4.2 CLEC listings can be submitted for inclusion in Qwest white pages directories according to the directions in the Qwest Listings User Documents for ~~Facility Based and Resale~~Facility-Based and Reseller CLECs, which is available

on-line through the Interconnect and Resale Resource~~Guide (http//www.uswest.com/carrier/guides/interconnect/index.html)~~Guide, (http//www.uswest.com//wholesale/ or will be provided in hard copy to CLEC upon request. Initial information and directions are available in the Interconnect and Resale Resource Guide.

10.4.4.3 CLEC can submit the OBF forms incorporated in the Local Service Request via the IMA EDI, IMA GUI, or fax.

10.5 Directory Assistance

10.5.1 Description

10.5.1.1 Directory assistance service is a telephone number, voice information service that Qwest provides to its own end users and to other ~~Telecommunications Carriers.~~Telecommunications Carriers. Qwest provides CLEC non-discriminatory access to Qwest's directory assistance centers, services and directory assistance databases. There are three forms of Directory Assistance Services available pursuant to this Agreement -- Directory Assistance Service, Directory Assistance List Services, and Directory Assistance Database Service. These services are available with CLEC-specific branding, generic branding and Directory Assistance Call Completion Link options.

10.5.1.1.1 Directory Assistance Service -- The published and non-listed telephone numbers provided within the relevant geographic area are those contained in Qwest's then current Directory Assistance database.

10.5.1.1.1.1 Local Directory Assistance Service -- Allows CLEC's end users to receive published and non-listed telephone numbers within the caller's NPA/LATA geographic areas, whichever is greater.

10.5.1.1.1.2 National Directory Assistance Service -- Allows CLEC's end users to receive listings from Qwest's Local Directory Assistance database and from the database of the National Directory Assistance services vendor selected by Qwest. National Directory Assistance Service includes Local Directory Assistance Service.

10.5.1.1.1.3 Call Branding Service – Allows CLEC's end users to receive the service options listed in 10.5.1.1.1.1 and 10.5.1.1.1.2 branded with the brand of CLEC, where technically feasible or with a generic brand. Call Branding announces CLEC's name to CLEC's end user at the start and completion of the call. Call Branding is an optional service available to CLEC.

a) Front End Brand -- Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand -- Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End Brand message.

c) There is a non-recurring charge to load CLEC's branded message in each switch.

d) Qwest will record the CLEC's branded message.

10.5.1.1.1.4 Call Completion Link allows the CLEC's end users' calls to be returned to the CLEC for completion on the CLEC's network, where available. There is a recurring charge per call.

10.5.1.1.2 Directory Assistance List Service -- Directory Assistance List Service is the ~~bulk transfer of~~access to Qwest's directory listings for subscribers within Qwest's ~~14~~fourteen (14) states for the purpose of providing ~~under a non-exclusive, non-transferable, revocable license to use the information solely for the purpose of providing~~Directory Assistance Service to its local exchange end user customers subject to the terms and conditions of this Agreement. See Section 10.6 for terms and conditions relating to the Directory Assistance List ~~Services.~~Services. ~~under a non-exclusive, non-transferable, revocable license to use the information solely for the purpose of providing directory assistance service subject to the terms and conditions of this Agreement. See Section 10.6 of this Agreement for the terms and conditions under which Qwest supplies Directory Assistance List Services to CLEC.~~

10.5.1.1.2.1 If CLEC elects to build its own directory assistance service, it can obtain Qwest directory listings through the purchase of the Directory Assistance List.

10.5.1.1.3 Directory Assistance Database Service -- Qwest shall provide CLEC non-discriminatory access to Qwest's Directory Assistance Database or "Directory1" database, where technically feasible, on a "per dip" basis.

10.5.2 Terms and Conditions

10.5.2.1 Qwest will provide CLEC non-discriminatory access to Qwest's directory assistance databases, directory assistance centers and personnel to provide Directory Assistance service.

10.5.2.2 Qwest's Directory Assistance database contains only those published and non-listed telephone number listings obtained by Qwest from its own end users and other Telecommunications Carriers.

10.5.2.3 Qwest will provide access to Directory Assistance Service for facility-based CLECs via dedicated multi-frequency (MF) operator service trunks. CLEC may purchase operator service trunks from Qwest or provide them itself. These operator service trunks will be connected directly to a Qwest Directory

Assistance host or remote switch. CLEC will be required to order or provide at least one operator services trunk for each NPA served.

10.5.2.4 Qwest will perform Directory Assistance Services for CLEC in accordance with operating methods, practices, and standards in effect for all Qwest end users. Qwest will provide the same priority of handling for CLEC's end user calls to Qwest's Directory Assistance service as it provides for its own end user calls. Calls to Qwest's directory assistance are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users.

10.5.2.5 Call Branding for Directory Assistance will entail recording and setting up a brand message. Dedicated interoffice facilities are required.

10.5.2.6 Call Completion Link requires dedicated interoffice facilities.

10.5.2.7 If CLEC elects to access the Qwest Directory Assistance databases on a per dip basis, Qwest will provide to CLEC the facility and equipment specifications necessary to enable CLEC to obtain compatible facilities and equipment.

10.5.2.8 A reseller CLECs' end user customers may use the same dialing pattern to access directory assistance service as used by Qwest's end user customers (i.e., 411, 1+411, or 1+NPA+555-1212).

10.5.2.9 A facility-based CLEC may choose to have its end-users dial a unique number or use the same dialing pattern as Qwest end users to access Qwest Directory Assistance operators.

10.5.2.10 Qwest will timely enter into its Directory Assistance database updates of CLEC's listings. Qwest will implement quality assurance procedures such as random testing for listing accuracy. Qwest will identify itself to end users calling its DA service provided for itself either by company name or operating company name or operating company number so that end users have a means to identify with whom they are dealing.

10.5.2.10.1 In accordance with Section 18, CLEC may request a comprehensive audit of Qwest's use of CLEC's directory assistance listings. In addition to the terms specified in Section 18, the following also apply: as used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the directory assistance listings provided hereunder and such other Party's performance of its obligations under this Agreement. CLEC may perform up to two (2) audits per 12-month period commencing with the effective date of this Agreement of Qwest's use of CLEC's directory assistance listings in Qwest's directory assistance service. CLEC shall be entitled to "seed" or specially code some or all of the directory assistance listings that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Agreement.

10.5.2.11 Qwest shall use CLEC's Directory Assistance listings supplied to Qwest by CLEC under the terms of this Agreement solely for the purposes of providing Directory Assistance Service and for providing DA List Information to Directory Assistance providers.

~~10.5.2.12 At least ninety (90) days prior to using Qwest's directory assistance services, CLEC will provide a written forecast of its expected volume of directory assistance service calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of directory assistance service use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.~~ This has never been discussed or agreed to in the workshops on this checklist item.

10.5.3 Rate Elements

The following rate elements apply to directory assistance service and are contained in Exhibit A of this Agreement.

10.5.3.1 A per call rate is applicable for Local Directory Assistance and National Directory Assistance Service selected by CLEC.

10.5.3.2 A non-recurring setup and recording fee will be charged for establishing each Call Branding option. A nonrecurring charge to load the CLEC's brand in each switch is also applicable. Such non-recurring fees must be paid before service commences.

10.5.3.3 A per call rate is applicable for Call Completion Link.

10.5.4 Ordering Process

CLEC will order Directory Assistance Service by completing the questionnaire entitled "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." This questionnaire may be obtained from CLEC's Qwest account manager.

10.5.5 Billing

10.5.5.1 Qwest will track and bill CLEC for the number of calls placed to Qwest's Directory Assistance service by CLEC's end users as well as for the number of requests for Call Completion Link.

10.5.5.2 For purposes of determining when CLEC is obligated to pay the per call rate, the call shall be deemed made and CLEC shall be obligated to pay when the call is received by the Operator Services switch. An end user may request and receive no more than two telephone numbers per Directory Assistance call. Qwest will not credit, rebate or waive the per call charge due to any failure to provide a telephone number.

10.5.5.3 Call Completion Link will be charged at the per call rate when the end user completes the required action (i.e., "press the number one," "stay on the line," etc.).

10.6 Directory Assistance List

10.6.1 Description

10.6.1.1 Directory Assistance List (DA List) Information consists of name, address and telephone number information for all end users of Qwest and other LECs that are contained in Qwest's directory assistance database and, where available, related elements required in the provision of Directory Assistance service to CLEC's end users. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's end user Directory Assistance listings to Directory Assistance providers. In the case of end users who have non-published listings, Qwest shall provide the end user's local numbering plan area ("NPA"), address, and an indicator to identify the non-published status of the listing to CLEC; however, Qwest will not provide the non-published telephone number.

10.6.1.2 Qwest will provide DA List Information via initial loads and daily updates either by means of a magnetic tape or Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. Qwest will provide all changes, additions or deletions to the DA List Information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

10.6.1.3 DA List Information shall specify whether the Qwest subscriber is a residential, business, or government subscriber, and the listings of other carriers will specify such information where it has been provided on the carrier's listing order.

10.6.1.4 In the event CLEC requires a reload of DA List Information from Qwest's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the rate specified in Exhibit A.

10.6.1.5 Qwest and CLEC will cooperate in the designation of a location to which the data will be provided.

10.6.2 Terms and Conditions

10.6.2.1 Qwest grants to CLEC, as a competing provider of telephone exchange service and telephone toll service, ~~a non-exclusive, non-transferable, revocable license to use~~access to the DA List Information solely for the purpose of providing ~~DA service~~Directory Assistance Service to its local exchange end user customers, or for other incidental use by other carrier's customers, ~~carriers'~~or for other incidental use by other carrier's customers, subject to the terms and conditions of this Agreement. As it pertains to the DA List Information in this Agreement, "Directory Assistance Service" shall mean the provision, by CLEC via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone

number. Should CLEC cease to be a ~~Telecommunications Carrier,~~Telecommunications Carrier, a competing provider of telephone exchange service or telephone toll service, this ~~license~~access grant automatically ~~terminates. DA List~~terminates ~~information~~

10.6.2.1.1 Qwest shall make commercially reasonable efforts to ensure that listings of Qwest retail end users provided to CLEC in Qwest's DA List Information are accurate and complete. All third party DA List Information is provided AS IS, WITH ALL FAULTS. Qwest further represents that it shall review all of its end user listings information provided to CLEC, including end user requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.6.2.2 CLEC will obtain and timely enter into its Directory Assistance database daily updates of the DA List Information, will implement quality assurance procedures such as random testing for directory assistance listing accuracy, and will identify itself to end-users calling its DA service either by company name or operating company number so that~~end-~~ end-users have a means to identify with whom they are dealing.

10.6.2.3 CLEC shall ~~not use the DA List Information provided hereunder for any other purpose whatsoever. By way of example and not limitation, Qwest's DA List Information shall not be used by CLEC for soliciting subscribers, telemarketing, creating or distributing marketing lists or other compilations of~~use Qwest's Directory Assistance listings supplied to CLEC under the terms of this Agreement solely for the purposes of providing Directory Assistance Service. ~~marketing information, or publishing any form of a directory~~.

10.6.2.4 Qwest shall retain all right, title, interest and ownership in and to the DA Listing Information it provides hereunder. CLEC acknowledges and understands that while it may disclose the names, addresses, and telephone numbers (or an indication of non-published status) of Qwest's end users to a third party calling its Directory Assistance for such information, the fact that such end user subscribes to Qwest's ~~Telecommunications Services~~telecommunications services is confidential and proprietary information and shall not be disclosed to any third party.

10.6.2.5 CLEC shall not sublicense, copy or allow any third party to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of Qwest's DA List Information at least equal to the measures it takes to protect its own confidential and proprietary information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to Qwest's DA List Information when contained in any database.

10.6.2.5.1 Unauthorized use of Qwest's DA List information, or any disclosure to a third party of the fact that an end user, whose listing is furnished in the DA list, subscribes to Qwest's, another Local Exchange Carrier's, Reseller's or CMRS's Telecommunications Services shall be

considered a material breach of this Agreement and shall be resolved under the Dispute Resolution provisions of this Agreement.

10.6.2.6 Within five (5) days after the expiration or earlier termination of this Agreement, CLEC shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List Information, any portions thereof, and any and all information extracted therefrom, from its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to Qwest from an officer that all of the foregoing actions have been completed. A copy of this certification may be provided to third party carriers if the certification pertains to such carriers' DA List Information contained in Qwest's database.

10.6.2.7 CLEC is responsible for ensuring that it has proper security measures in place to protect the privacy of the end user information contained within the DA List Information. CLEC must remove from its database any telephone number for an end user whose listing has become non-published when so notified by Qwest.

10.6.2.8 Audits -- In accordance with Section 18, Qwest may request a comprehensive audit of CLEC's use of the DA List Information. In addition to the terms specified in Section 18, the following also apply:

10.6.2.8.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DA List Information provided hereunder and such other Party's performance of its obligations under this Agreement. Either Party (the "Requesting Party") may perform up to two (2) Audits per 12 month period commencing with the effective date of this Agreement. Qwest shall be entitled to "seed" or specially code some or all of the DA List Information that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in Section 10.6.2.2 above.

10.6.2.8.2 All paper and electronic records will be subject to audit.

10.6.2.9 CLEC recognizes that certain carriers who have provided DA List Information that is included in Qwest's database may be third party beneficiaries of this Agreement for purposes of enforcing any terms and conditions of the Agreement other than payment terms with respect to their D A List Information.

10.6.2.10 Qwest will provide a non-discriminatory process and procedure for contacting end users with non-published telephone numbers in emergency situations for non-published telephone numbers that are included in Qwest's directory assistance database. Such process and procedure will be available to CLEC for CLEC's use when CLEC provides its own directory assistance and purchases Qwest's Directory Assistance List product.

10.6.3 Rate Elements

Recurring and non-recurring rate elements for DA List Information are described below and are contained in Exhibit A of this Agreement.

10.6.3.1 Initial Database Load -- A "snapshot" of data in the Qwest DA List Information database or portion of the database at the time the order is received.

10.6.3.2 Reload -- A "snapshot" of the data in the Qwest DA List Information database or portion of the database required in order to refresh the data in CLEC's database.

10.6.3.3 Daily Updates -- Daily change activity affecting DA List Information in the listings database.

10.6.3.4 One-Time Set-Up Fees -- Charges for special database loads.

10.6.3.5 Output Charges -- Media charges resulting from either the electronic transmission or tape delivery of the DA List Information, including any shipping costs.

10.6.4 Ordering

10.6.4.1 CLEC may order the initial DA List Information load or update files for Qwest's local exchange service areas in its 14 state operating territory or, where technically feasible, CLEC may order the initial DA List Information load or update files by Qwest White Page Directory Code or NPA.

10.6.4.2 Special requests for data at specific geographic levels (such as NPA) must be negotiated in order to address data integrity issues.

10.6.4.3 CLEC shall use the Directory Assistance List Order Form found in the Interconnect & Resale Resource Guide.

10.7 Toll and Assistance Operator Services

10.7.1 Description

10.7.1.1 Toll and assistance operator services are a family of offerings that assist end users in completing EAS/local and long distance calls. Qwest provides non-discriminatory access to Qwest operator service centers, services and personnel.

10.7.1.1.1 Local Assistance. Assists CLEC end users requesting help or information on placing or completing EAS/local calls, connects CLEC end users to home NPA directory assistance, and provides other information and guidance, including referral to the business office and repair, as may be consistent with Qwest's customary practice for providing end user assistance.

10.7.1.1.2 IntraLATA Toll Assistance. Qwest will direct CLEC's end user to contact its provider to complete interLATA toll calls. Nothing in this Section is intended to obligate Qwest to provide any toll services to CLEC or CLEC's end users.

10.7.1.1.3 Emergency Assistance. Provide assistance for handling a CLEC end user's EAS/local and ~~IntraLATA~~intraLATA toll calls to emergency agencies, including but not limited to, police, sheriff, highway patrol and fire. CLEC is responsible for providing Qwest with the appropriate emergency agency numbers and updates.

10.7.1.1.4 Busy Line Verification ("BLV") is performed when a calling party requests assistance from the operator bureau to determine if the called line is in use. The operator will not complete the call for the calling party initiating the BLV inquiry. Only one BLV attempt will be made per call, and a charge shall apply.

10.7.1.1.5 Busy Line Interrupt ("BLI") is performed when a calling party requests assistance from the operator to interrupt a telephone call in progress. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will not connect the calling and called parties. The operator will make only one BLI attempt per call and the applicable charge applies whether or not the called party releases the line.

10.7.1.1.6 Quote Service – Provide time and charges to hotel/motel and other CLEC end users for guest/account identification.

10.7.2 ~~——~~Terms and Conditions

10.7.2.1 For facility-based CLECs, Interconnection to Qwest's Operator Services switch is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to the Qwest Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote Qwest Operator Services switch.

10.7.2.2 Trunk provisioning and facility ownership must follow Qwest guidelines.

10.7.2.3 In order for CLEC to use Qwest's operator services as a facility-based CLEC, CLEC must provide an operator service trunk between CLEC's end office and the Interconnection point on the Qwest operator services switch for each NPA served.

10.7.2.4 The technical requirements of operator service trunk are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore document FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

10.7.2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.

10.7.2.6 CLEC will provide separate no-test trunks (not the ~~local/IntraLATA~~local/IntraLATA trunks) to the Qwest BLV/BLI hub or to the Qwest Operator Services Switches.

10.7.2.7 Qwest will perform Operator Services in accordance with operating methods, practices, and standards in effect for all its end users. Qwest will respond to CLEC's end user calls to Qwest's operator services according to the same priority scheme as it responds to Qwest's end user calls. Calls to Qwest's operator services are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users.

10.7.2.8 ~~It is understood that Qwest shall not be obligated to provide specific~~Qwest will provide operator services ~~where there are facility or technical limitations. Qwest, in its reasonable discretion,~~to CLEC where technically feasible and facilities are available. Qwest may from time-to-time modify and change the nature, extent, and detail of specific operator services available to its retail end users, and to the extent is does so, Qwest will provide forty-five (45) days' advance written notice to CLEC of such changes.

These revisions were never discussed or agreed to in any workshop on this checklist item.

10.7.2.9 Qwest shall maintain adequate equipment and personnel to reasonably perform the Operator Services. CLEC shall provide and maintain the facilities necessary to connect its end users to the locations where Qwest provides the Operator Services and to provide all information and data needed or reasonably requested by Qwest in order to perform the Operator Services.

10.7.2.10 Call Branding is an optional service available to CLEC. Call Branding announces CLEC's name to CLEC's end user at the start of the call and at the completion of the call. If CLEC selects the Call Branding option, Qwest will provide Call Branding to CLEC where technically feasible.

a) Front End Brand – Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand – Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End Brand message.

10.7.2.11 Call branding for toll and operator services will entail recording and setup of a brand message. Qwest will record the CLEC's branded message. Dedicated interoffice facilities will be required.

10.7.2.12 Call Branding also entails a nonrecurring charge to load CLEC's branded message in each switch.

10.7.2.13 CLEC's end-users may dial "0" or "0+" to access Qwest operator services. A facility-based CLEC may choose to have its end-users access Qwest operators by dialing a unique number or by using the same dialing pattern as Qwest end users.

~~10.7.2.14 At least ninety (90) days prior to using Qwest's operator services, CLEC will provide a written forecast of its expected volume of operator services calls. Should CLEC plan to substantially increase or decrease its actual usage as forecast by more than twenty-five percent (25%) of originally forecast usage, CLEC will give Qwest advance written notice of such planned change at least sixty (60) days prior to implementing such changed use. CLEC will update its forecasts of operator services use, in writing annually, at least sixty (60) days prior to the anniversary date of its first forecast.~~

This section was never discussed or agreed to in the workshops on this checklist item.

10.7.3 Rate Elements

Qwest toll and assistance operator services are offered under two pricing options. Option A offers a per message rate structure. Option B offers a work second and a per call structure. Applicable recurring and nonrecurring rate elements are detailed below and in Exhibit A of this Agreement.

10.7.3.1 Option A - Operator Services Rate Elements

10.7.3.1.1 Operator Handled Calling Card – For each completed calling card call that was dialed 0+ where the operator entered the calling card number.

10.7.3.1.2 Machine Handled Calling Card – For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.

10.7.3.1.3 Station Call – For each completed station call, including station sent paid, collect, third number special billing or 0- calling card call.

10.7.3.1.4 Person Call – For each completed person to person call regardless of the billing used by the end user.

10.7.3.1.5 Connect to Directory Assistance – For each operator placed call to directory assistance.

10.7.3.1.6 Busy Line Verify – For each call where the operator determines that conversation exists on a line.

10.7.3.1.7 Busy Line Interrupt – For each call where the operator interrupts conversation on a busy line and requests release of the line.

10.7.3.1.8 Operator Assistance – For each EAS/local call, whether completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator and no attempt is made to complete a call; and calls for quote service.

10.7.3.1.9 "Completed call" as used in this Section shall mean that the end user makes contact with the location, telephone number, person or extension designated by the end user.

10.7.3.2 Option B - Per Work Second and Computer Handled Calls

10.7.3.2.1 Operator Handled - CLEC will be charged per work second for all calls originating from its end users and facilities that are routed to Qwest's operator for handling. Work second charging begins when the Qwest operator position connects with CLEC's end user and terminates when the connection between the Qwest operator position and CLEC's end user is terminated.

10.7.3.2.2 Machine Handled - calls that are routed without operator intervention. Machine handled calls include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

10.7.3.3 Call Branding Nonrecurring Charge. Qwest will charge to CLEC a nonrecurring setup and recording fee for establishing Call Branding and loading ~~the CLEC's brand in each switch.~~each switch with CLEC's branded message. CLEC must pay such non-recurring charges prior to commencement of the ~~service.~~service. The non-recurring set-up and recording charge will apply each time the CLEC's brand message is changed. The non-recurring charge to load the switches with the CLEC's branded message will be assessed each time there is any change to the switch.

10.7.4 Ordering Process

CLEC will order Operator Services by completing the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." Copies of this questionnaire may be obtained from CLEC's designated Qwest account manager.

10.7.5 Billing

10.7.5.1 Qwest will track usage and bill CLEC for the calls placed by CLEC's end users and facilities.

10.7.5.2 Qwest will compute CLEC's invoice based on both Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls). Qwest will charge CLEC whichever option results in a lower charge.

10.7.5.3 If, due to equipment malfunction or other error, Qwest does not have available the necessary information to compile an accurate billing statement, Qwest may render a reasonably estimated bill, but shall notify CLEC of the methods of such estimate and cooperate in good faith with CLEC to establish a fair, equitable estimate. Qwest shall render a bill reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, ~~Each Party~~ Qwest will provide CLEC ~~the other~~ with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by a CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, ~~Each Party~~ Qwest will provide CLEC ~~the other~~ with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare duct/conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty duct/conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct.

10.8.1.2.1 The terms Duct and Conduit mean a single enclosed raceway for conductors, cable and/or wire. Duct and conduit may be in the ground, may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct and conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser. The terms Duct and Conduit include riser conduit.

10.8.1.2.32 The term Innerduct means a duct-like raceway smaller than a duct/conduitduct that is inserted into a duct/conduit so that the duct may typically carry three cables.

10.8.1.2.4 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain

facilities under, on, above, across, along or through private property or enter multi-unit buildings.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, ~~each Party~~ Qwest will provide to CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, ~~the other~~ access to available ROW for the purpose of placing telecommunications facilities ~~for transmitting Telecommunication Services~~. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

~~10.8.1.4 Reciprocity – The rights, benefits and obligations in this Section 10.8 are reciprocal. This Section 10.8 expressly specifies rights, benefits, and duties in the context of CLEC obtaining access to qwest's poles, ducts, conduit and ROW. However, in the context of Qwest obtaining access to CLEC's poles, ducts, conduit, and ROW, CLEC shall have the duties, benefits, and rights expressly ascribed to Qwest herein, and Qwest shall have the duties, benefits, and rights expressly ascribed to CLEC herein.~~

10.8.1.4 Reserved for Future Use

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Duct/Innerduct Occupancy General Information Document~~Pole and Attachment and/or Innerduct Occupancy General Terms and Qwest Conditions~~ attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Duct/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Duct/Innerduct/ROW route, including estimated distances between major

points, the identification and location of the Poles/Duct/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of ~~when~~ extensive requests. Extensive requests involve the gathering of plats from ~~multiple locations~~more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Duct/Innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Duct/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles, Innerduct, duct/conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare duct/conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct/conduit to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Duct/Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Duct/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 Replacement/Modification/Installation - If CLEC requests Qwest to replace or modify existing Poles/Duct/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Duct/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Duct/Innerduct, if necessary. Ownership of new Poles/Duct/Innerduct shall vest to Qwest.

10.8.2.10.1 Upon request, Qwest shall permit CLEC to install Qwest Poles/Duct/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Duct/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances.

10.8.2.10.2 To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. ~~Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.~~ AT&T has not agreed to the deletion of this language.

10.8.2.10.3 The modifying party or parties may recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher will be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. The modifying party or parties seeking to recover modification costs from parties that later obtain attachments shall be responsible for maintaining all records regarding modification costs. Qwest shall not be responsible for maintaining records regarding modification costs on behalf of attaching entities.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwestand at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Duct/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Duct/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Duct/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Duct/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Duct/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Duct/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Duct/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal ~~any~~ a material violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20~~this Agreement~~; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon Qwest nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an ~~order~~ Order for cause, or if CLEC terminates an ~~order~~ Order without cause, subject to 10.8.4.~~5~~4, CLEC shall pay

termination charges equal to the amount of fees and charges remaining on the terminated ~~order~~Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Duct/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Duct/Innerduct.

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, duct/conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, duct/conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, duct/conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, duct/conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, duct/conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, duct/conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, duct/conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, duct/conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest, its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. ~~Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises CLEC's standard maintenance practices for facilities shall be made available to Qwest upon request.~~ CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Duct/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Duct/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Duct/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Duct/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Duct/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to the cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than by CLEC.CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Duct/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Access Agreement that has been duly executed (and, in cases where the underlying ROW agreement was recorded in the real property records for the county in which the ROW is located, acknowledged and recorded in the real property records for the county in which the ROW is located) shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the

landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

10.8.3 Rate Elements

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, ~~for lease.~~ or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW(i.e., publicly recorded and non-recorded)(e.g. easement, lease, etc.) and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to Telecommunictions Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for poles and for innerduct.

10.8.3.2 Field Verification Fee. A non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. The estimated pre-paid fee shall be billed in advance. Separate Field Verification Fees apply for poles and for manholes.

10.8.3.3 Make-Ready Work. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility available for lease. For innerduct leases, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A fee which is charged for the occupancy, including any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A fee which is charged for the occupancy, including any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.4 Ordering

~~The Ordering Process~~ There are two (2) ~~has distinct~~ steps required before placing an Order for access to ROW, Duct/Innerduct and Pole Attachment~~for ROW, Innerduct and Pole Attachment~~: Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ~~request for~~ ROW access, Pole Attachment or Duct/Innerduct Occupancy, Qwest will provide CLEC with ~~a document of General Information for Pole Attachment and Innerduct Occupancy along with a description of the application process~~Exhibit D. ~~The~~ CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment ~~or~~, proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Duct/Innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. ~~The~~ CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibt D.~~its inquiry~~.

~~10.8.4.2 Inquiry Reviews~~

10.8.4.1.1~~a)~~ Inquiry Review – Duct/Conduit/Innerduct. Qwest will complete the database inquiry and prepare a duct/conduit structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

~~b)~~10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. ~~The Qwest field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. Qwest will charge CLEC for field engineer time.~~

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to the CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement

form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.32 ~~Request – Innerduct. CLEC will review the Inquiry results and determine whether to proceed with verification. If desired, CLEC will sign and return Attachment 1 of the General Information document along with a check for the estimated verification costs. Upon payment of the estimated verification costs, Qwest will provide the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make-ready costs required to provide Innerduct; the schedule in which the Make-ready work will be completed; and, the annual recurring prices associated with the attachment of facilities. Such estimates shall be provided on Attachment 2 of the General Information document and shall be completed within thirty-five (35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between Qwest and CLEC identified in the Cost Quotation.~~

Field Verification – Poles Duct/Innerduct and Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus $10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Duct/Innerduct or ROW: (a) in the case of Poles or innerduct/duct/conduit, a field survey and site investigation of the Poles or innerduct/duct/conduit, including the preparation of distances and drawings, to determine availability of existing Poles/innerduct/duct/conduit; identification of Make-Ready costs required to provide space; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey the interest identified in the Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve

Qwest; and/or (c) In the case of Poles or Duct/Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.43 Order – Poles and Duct/Innerduct. ~~Upon completion of the procedures described above, Qwest shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates.~~ The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated ~~lease~~ recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the ~~Make-Ready~~ fees identified, Qwest will assign ~~CLEC's~~ the requested space and ~~complete the~~ commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Duct/Innerduct are ready ~~for attachment of facilities~~.

10.8.4.54 Make-Ready - Estimates of Make-Ready in the Order are used to cover actual Make-Ready costs.

10.8.4.4.1 ~~However, i~~If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate

10.8.4.4.2 Within fifteen (15) business days of a request therefor, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within ~~thirty~~ sixty (3060) calendar days after written notification of the completion of the Make-Ready work. ~~of the completion of Make-Ready work. If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefor. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within thirty (30) calendar days of the completion of Make-Ready work if~~

~~CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last. If Qwest denies the Poles/Innerduct, ROW request, Qwest shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any, upon request. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last.~~

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

10.8.4.5 Reserved for future use.

10.8.4.6 For the period beginning at the time of the making of a granted inquiry and ending ninety (90) days following the grant of an inquiry, Qwest shall reserve such available poles, ducts, conduit, and right of way for CLEC that CLEC may reasonably request. CLEC shall pay an appropriate reservation fee mutually agreed upon by the Parties for such reservation and shall elect whether to accept the poles, ducts, conduits, or right of way within the ninety (90) day period following the granting of the inquiry. CLEC may accept such facilities by sending written notice to Qwest.

10.8.4.6.1 During the reservation period, if another party, including Qwest, makes a bona fide and good faith request for the use of any poles, ducts, conduits or right of way that CLEC has previously reserved, CLEC shall have a "right of first refusal" over these facilities. If CLEC

chooses to exercise its right of first refusal, it shall do so by providing Qwest written notice of same within twenty (20) business days following receipt of written notice from Qwest advising CLEC of the bona fide and good faith request.

10.8.4.6.2 To ensure proper use of reserved facilities, after the expiration of the reservation period or upon exercise of its right of first refusal, whichever occurs earlier, CLEC must begin paying the rates for access (whether or not it has actually installed or attached facilities) and shall begin construction on the facility within six (6) months or release its reservation.

10.8.4.6.3 After acceptance by CLEC, CLEC shall have six (6) months to begin attachment and/or installation of its facilities to the poles, ducts, conduit and right of way or request Qwest to begin Make Ready or other construction activities. Any such construction, installation or Make Ready by CLEC shall be completed by the end of one (1) year after written notice of acceptance. CLEC shall not be in default of the six month or one-year requirement above if such default is caused in any way by any action, inaction or delay on the part of Qwest or its affiliates or subsidiaries.

10.8.5 Billing

CLEC agrees to pay ~~Qwest Poles/Innerduct preparation charges in advance and usage~~the following fees ~~("Fees")~~ in advance as specified in ~~the Request and Order~~ (Attachment 1.A, 1.B, ~~1~~ and ~~Attachment~~ 2 of ~~the General Information Document)~~Exhibit D: Inquiry Fee, Field Verification Fee, Make Ready Fee, Pole Attachment Fee, and Innerduct Occupancy Fee and Access Agreement Consideration. Make –Ready Fees will be computed in compliance with applicable local, state and federal guidelines. ~~Such~~ Usage ~~Fees~~ fees for Poles/Duct/Innerduct (i.e., Pole Attachment Fee and Duct/Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage ~~Fees~~ fees for Poles/Duct/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Duct/Innerduct will be assessed as of January 1 and July 1 of each year. ~~Such~~ All ~~Fees~~ fees shall be paid within thirty (30) days following receipt of invoices ~~therefor~~. All ~~Fees~~ fees are not refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Duct/Innerduct.

10.8 Access to Poles, Ducts, Conduits, and Rights of Way

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, ~~Each Party~~ Qwest will provide CLEC with~~the other with~~ access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by a CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest ~~Eeach Party~~ will provide ~~the other~~CLEC with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare duct/conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty duct/conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. ~~Duct and conduit may follow streets, bridges, public or private right-of-ways or may be within some portion of a multi-unit building. Within a multi-unit building, duct/conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.~~

10.8.1.2.1 The terms Duct and Conduit mean a single enclosed raceway for conductors, cable and/or wire. Duct and conduit may be in the ground, may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct and conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser. The terms Duct and Conduit include riser conduit.

~~10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.~~

10.8.1.2.2 The term Innerduct means a duct-like raceway smaller than a duct/conduitduct that is inserted into a duct/conduit so that the duct may typically carry three cables.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, ~~each Party~~Qwest will provide to CLEC, ~~via a Quitclaim without warrantyan~~ Access Agreement in the form of Attachment 4 to Exhibit D, ~~to the other~~ access to available ROW for the purpose of placing telecommunications facilities ~~for transmitting Telecommunication Services~~. ROW includes land or other property

owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings. Within a multi-unit building, a ROW includes a pathway that is actually used or has been specifically designated for use by Qwest as part of its transmission and distribution network where the boundaries of the pathway are clearly defined either by written specifications or unambiguous physical demarcation.

~~10.8.1.3.2 Requests by Qwest for ROW owned or controlled by CLEC shall be handled in a manner similar to that by which Qwest handles requests by CLEC for ROW owned or controlled by Qwest pursuant to this Agreement.~~

~~10.8.1.4 Reciprocity – The rights, benefits and obligations in this Section 10.8 are reciprocal. This Section 10.8 expressly specifies rights, benefits, and duties in the context of CLEC obtaining access to U S WEST's poles, ducts, conduit and ROW. However, in the context of U S WEST obtaining access to CLEC's poles, ducts, conduit, and ROW, CLEC shall have the duties, benefits, and rights expressly ascribed to U S WEST herein, and U S WEST shall have the duties, benefits, and rights expressly ascribed to CLEC herein.CLEC Duties – Pursuant to 47 U.S.C. Section 251 (b)(4), CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to on rates, terms, and conditions that are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for to provide service as may be set forth in 47 U.S.C. §251(b)(4), applicable FCC orders and regulations or state rules.~~

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to (i) convey an interest in real or personal property or (ii) to provide access to a third party and receive compensation for doing so.

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Duct/Innerduct~~Innerduct~~ Occupancy General Information Document, ~~U S WEST Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions~~ attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to

poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Duct/Innerduct~~Innerduct~~ or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NESC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Duct/Innerduct~~Innerduct~~/ROW route, including estimated distances between major points, the identification and location of the Poles/Duct/Innerduct~~Innerduct~~ and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of ~~when~~ extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, ~~multiple locations,~~ span ~~multiple~~more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Duct/Innerduct~~Innerduct~~ or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Duct/Innerduct~~Innerduct~~, duct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles, /Innerduct, duct/conduit~~conduit~~ and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare duct/conduit~~conduit~~ include the placement of

Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct/conduit~~duct~~ to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Duct/Innerduct~~Innerduct~~ access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Duct/Innerduct~~Innerduct~~ on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 Replacement/Modification/Installation - If CLEC requests Qwest to replace or modify existing Poles/Duct/Innerduct~~Innerduct~~ to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Duct/Innerduct~~Innerduct~~, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Duct/Innerduct~~Innerduct~~, if necessary. Ownership of new Poles/Duct/Innerduct~~Innerduct~~ shall vest to Qwest.

10.8.2.10.1 Upon request, Qwest shall permit CLEC to install Poles/Duct/Innerduct~~Innerduct~~. Qwest reserves the right to reject any non-conforming replacement Pole/duct/conduit~~Conduit~~ installed by CLEC that do not conform to the NESC, OSHA or local ordinances.

10.8.2.10.2 To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who

do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. ~~Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.~~

10.8.2.10.3 The modifying party or parties may recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher will be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. The modifying party or parties seeking to recover modification costs from parties that later obtain attachments shall be responsible for maintaining all records regarding modification costs. Qwest shall not be responsible for maintaining records regarding modification costs on behalf of attaching entities.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Duct/Innerduct~~Innerduct~~ completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Duct/Innerduct~~Innerduct~~ system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Duct/Innerduct~~Innerduct~~ system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Duct/Innerduct~~Innerduct~~ or ROW system and CLEC shall remove its facilities from said Poles/Duct/Innerduct~~Innerduct~~ or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable

additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Duct/Innerduct~~Innerduct~~ system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Duct/Innerduct~~Innerduct~~ or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal ~~any~~ a material violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section ~~this Agreement~~10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon U S WEST nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an ~~e~~Order for cause, or if CLEC terminates an ~~e~~Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~e~~Order(s) and shall remove its facilities from the Poles/Duct/Innerduct~~Innerduct~~ within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/ Duct/Innerduct~~Innerduct~~ at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Duct/Innerduct~~Innerduct~~, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the ~~Quitclaim Right of Access Agreement ("Quitclaim") by which~~ Qwest

~~Quitclaim~~conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, duct/conduit~~conduit~~ or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, duct/conduit~~conduit~~ or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, duct/conduit~~conduit~~ or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, duct/conduit~~conduit~~ or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, duct/conduit~~conduit~~, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, duct/conduit~~conduit~~ or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, duct/conduit~~conduit~~ or ROW at the current market value if no other party purchased the Poles/Innerduct, duct/conduit~~conduit~~ or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest, its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. ~~U S WEST's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate U S WEST premises CLEC's standard maintenance practices for facilities shall be made available to U S WEST upon request.~~ CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Duct/Innerduct~~Innerduct~~ covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Duct/Innerduct~~Innerduct~~ for other than repair or maintenance purposes, no replacement on the Poles/ Duct/Innerduct~~Innerduct~~ shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Duct/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Duct/Innerduct~~Innerduct~~ for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of $200.00 per Pole or $200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive half the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. ~~shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from of the unauthorized attachment; and (2) the unauthorized attachment did not require to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by rather than CLEC.~~ CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Duct/Innerduct~~Innerduct~~ application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, innerducts, ~~conduit~~ducts/conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit DAtta~~chment D~~, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Quitclaim Access Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located

shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into an separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into an ROW agreement with CLEC.

10.8.3 Rate Elements

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available ~~for lease~~, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) ~~(e.g. easement, lease, etc.)~~ and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to ~~Telecommunictions~~Telecommunications Services provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for ROW, Poles and ~~for~~ duct/conduit ~~Conduit~~/Innerduct.

10.8.3.2 Field Verification Fee/~~Quitclaim~~Access Agreement Preparation Fee. In the case of Poles and Duct/Innerduct~~Innerduct~~, the Field Verification Fee is a ~~A~~ non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for Poles and Manholes. In the case of ROW, the ~~Quitclaim~~Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the ~~Quitclaim~~Access Agreement for each ROW requested by the CLEC. ~~The estimated pre-paid fee~~Field Verification and ~~Quitclaim~~Access Agreement Preparation Fees shall be billed in advance. ~~Separate Field Verification Fees apply for ROW, poles and for manholes~~.

10.8.3.3 Make-Ready ~~Work~~Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for ~~lease~~access. For innerduct ~~leases~~, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. ~~The estimated pre-paid fee shall be billed in advance.~~For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW, or other circumstances giving rise to such work beyond the simple preparation of one or more ~~Quitclaim~~Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 ~~ROW Access Fee~~~~Quitclaim~~Access Agreement Consideration. A pre-paid fee which constitutes consideration for ~~Quitclaiming~~conveying access to the ROW to CLEC ~~is charged for the access, including during any Make-Ready period, to ROW~~. This fee shall be a one-time (i.e. non-recurring) fee.~~annual unless CLEC requests that it be semi-annual~~.

10.8.4 Ordering

~~The Ordering Process has~~ There are two (2) ~~distinct~~ steps required before placing an Order for access to ROW, Duct/Innerduct~~Innerduct~~ and Pole Attachment: ~~steps for ROW, Innerduct and Pole Attachment:~~Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ~~request for~~ ROW access, Pole Attachment or Duct/Innerduct~~Innerduct~~ Occupancy, Qwest will provide CLEC with ~~a document of General Information for Pole Attachment and Innerduct Occupancy~~ Exhibit D ~~along with a description of the application process.~~ ~~The~~ CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, ~~or~~proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Duct/Innerduct~~Innerduct~~ and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. ~~The~~ CLEC will

include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.~~its inquiry.~~

~~10.8.4.2 Inquiry Reviews~~

10.8.4.1.1~~a)~~ ~~—~~Inquiry Review ~~—~~ ~~Innerduct~~Duct/Conduit/Innerduct. Qwest will complete the database inquiry and prepare a duct/conduit~~duct~~ structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.2 ~~b)~~ ~~—~~Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit Dwithin ten (10) calendar days of the request. ~~The U S WEST~~This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates. ~~field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time.~~

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide ~~a copy of ROW agreements (e.g. easements and licenses)~~the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to the CLEC within ~~forty-five (45) calendar days~~ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent to ~~Quitclaim Right of~~Regarding Access Agreement form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have

not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.32 ~~Request – Innerduct~~ Field Verification – Poles Duct/Innerduct~~Ducts~~ and ~~Quitclaim~~Access Agreement Preparation (ROW) ~~and ROW~~. CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or ~~Quitclaim~~Access Agreement preparation for ROW. If field verification or ~~Quitclaim~~Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D ~~the General Information document~~ along with a check for the relevant ~~estimated~~ verification ~~costs~~ fee (Field Verification Fee or ~~Quitclaim~~Access Agreement Preparation Fee) plus $10.00 per ~~Quitclaim~~Access Agreement as consideration for the ~~Quitclaim~~Access Agreement. Upon payment of the relevant ~~estimated verification costs~~fee and ~~Quitclaim~~Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Duct/Innerduct~~Innerduct Innerduct and ROW~~ or ROW: ~~the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required and from whom;~~ (a) in the case of Poles or innerduct/duct/conduit~~Duct~~, a field survey and site investigation of the Poles /~~Innerduct~~or innerduct/duct/conduit~~Duct~~, including the preparation of distances and drawings, to determine availability of existing Poles/innerduct/duct/conduit~~Innerduct~~; identification of Make-Ready costs required to provide ~~Innerduct~~space; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed ~~Quitclaim~~Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the ~~Quitclaim~~Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the ~~Quitclaim~~Access Agreement becomes effective to ~~Quitclaim~~convey the interest identified in the ~~Quitclaim~~Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve Qwest; and/or(c) In the case of Poles or Duct/Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities. ~~Such estimates~~ shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. ~~of the General Information document and shall be completed within thirty-five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between U S WEST and CLEC identified in the Cost Quotation~~. The Attachment 2 quotation shall be

valid for ninety (90) calendar days. ~~U S WEST will charge CLEC for field engineer time.~~

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.43 ~~Order~~Order – Poles and ~~, and Innerduct~~ Duct/Innerduct~~Ducts, and ROW.~~ ~~Upon completion of the procedures described above, U S WEST shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates.~~ The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access~~lease~~ charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the ~~Make-Ready~~ fees identified, Qwest will assign the~~CLEC's~~ requested space and commence any~~complete the~~ Make-Ready work which may be required. Qwest will notify CLEC when Poles/Duct/Innerduct~~Innerduct~~ are ready. ~~for attachment of facilities.~~

10.8.4.5~~4~~ Make-Ready - Estimates of Make-Ready ~~in the Order~~ are used to cover actual Make-Ready costs.

10.8.4.4.1 ~~However, if~~If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt ~~of~~ of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request ~~therefor~~, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty~~thirty~~ (30~~60~~) calendar days after written notification of the completion of the Make-Ready work. ~~of the completion of Make-Ready work. If the~~

~~actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within thirty (30) calendar days of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of U S WEST's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last. If U S WEST denies the Poles/Innerduct, ROW request, U S WEST shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and Upon CLEC request, U S WEST will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any., upon request. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or U S WEST's receipt of all records relating to the actual costs, whichever comes last.~~

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work ~~following receipt of invoice~~ if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

10.8.5 Billing

CLEC agrees to pay ~~Qwest Poles/Innerduct/ROW preparation charges~~the following fees in advance ~~and usage fees ("Fees") in advance~~ as specified in ~~the Request and Order~~ Attachments 1.A, ~~and~~ 1.B, and ~~Attachment~~ 2 of ~~the General Information Document~~ Exhibit D: Inquiry Fee, Field Verification Fee, ~~Quitclaim~~Access Agreement Preparation Fee, Make-Ready ~~Fees~~Fee, Pole Attachment Fee, Duct/Innerduct Occupancy Fee and ~~Quitclaim~~Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. ~~Such~~ Usage ~~F~~fees for Poles/Duct/Innerduct~~Innerduct~~ (i.e., Pole Attachment Fee and Duct/Innerduct~~Innerduct~~ ~~Occupany~~Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual ~~U~~usage ~~F~~fees for Poles/Duct/Innerduct~~Innerduct~~ will be assessed as of January 1 of each year. Semi-annual ~~U~~usage ~~f~~Ffees for Poles/Duct/Innerduct~~Innerduct~~ will be assessed as of January 1 and July 1 of each year. ~~Such Fees~~All fees shall be paid within thirty (30) days following receipt of invoices ~~therefor~~. All ~~F~~fees are not refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Duct/Innerduct~~Innerduct~~.

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's and WorldCom's Request to Supplement the Record Regarding Checklist Items 3, 7, & 10 in Docket No. T-00000A-97-0238 were sent by overnight delivery on April 6, 2001 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by electronic mail and overnight delivery on April 6, 2001 to:

Maureen Scott
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Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

and a true and correct copy was sent via electronic mail on April 6, 2001 to:

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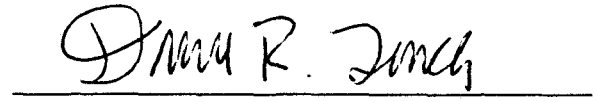

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation into U S WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996	)	DOCKET NO. UT-003022
In the Matter of U S WEST COMMUNICATIONS, INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	)	DOCKET NO. UT-003040 DRAFT INITIAL ORDER

I. INTRODUCTION

1 This draft initial order serves as the report of the Staff of the Washington Utilities and Transportation Commission (Commission) addressing the results of the first workshop, as well as the draft recommendations to the Federal Communications Commission (FCC) concerning the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc., ("U S WEST")[1] with certain requirements under Section 271 of the Telecommunications Act of 1996 (the Act).

2 Under Section 271, Regional Bell Operating Companies, or RBOCs, may only provide toll service between local area transport areas (LATAs) if the RBOCs can demonstrate that certain competitive conditions exist in their local markets. The FCC, after consultation with the Department of Justice (DOJ) and state commissions, may authorize an RBOC to provide interLATA service in a particular state if the RBOC meets the conditions, including competitive checklist items, set forth in subsection 271(c) of the Act. In particular, the FCC must consult with state commissions "in order to verify the compliance of the [RBOC] with" the requirements of subsection 271(c).

3 Qwest is the RBOC that provides local exchange intraLATA toll service to much of Washington state. In advance of Qwest filing an application with the FCC to enter the interLATA market, the Commission in October 1997 issued an Interpretive and

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[1] During this proceeding U S WEST completed its merger with Qwest. The names U S WEST and Qwest are used interchangeably in this document.

III. CHECKLIST ITEM NO. 3 - POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

A. FCC Requirements and Jurisdiction

11 Section 271(c)(2)(B)(iii) requires RBOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [RBOC] at just and reasonable rates in accordance with the requirements of section 224." The FCC's orders approving requests by SBC Communications in Texas and Bell Atlantic in New York to provide interLATA service provide that the FCC interprets Section 251(b)(4) of the Act to require "nondiscriminatory access to LEC poles, ducts, conduits, and rights-of-way for competing providers of telecommunications services in accordance with the requirements of Section 224."[2]

12 Section 224, which governs the regulation of pole attachments, provides that the FCC has jurisdiction over the rates, terms, and conditions for pole attachments, unless such matters are regulated by a state. While some portions of the FCC's rules governing pole attachments have been invalidated, the provisions relating to rates and most provisions relating to terms and conditions remain valid.[3] Subsection 224(c)(3) provides that:

> For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments-
>
> (A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and
> (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter
> (i) within 180 days after the complaint is filed with the state, or
> (ii) within the applicable period prescribed for such final action in such rules and regulations of the State if the prescribed period does not

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[2] *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, ¶243 (rel. June 30, 2000) (*SBC Texas Order*); *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 ¶263 (rel. Dec. 22, 1999) (*Bell Atlantic New York Order*).

[3] *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000).

extend beyond 360 days after the filing of such complaint.

13 The Commission has statutory authority to regulate in the public interest the rates, terms, and conditions of attachments to the poles, ducts, conduits, or rights-of-way of electric or telecommunications companies in the state of Washington. *See chapter 80.54 RCW.* Washington is one of the states that certified to the FCC that it regulates rates, terms, and conditions for pole attachments.[4] Washington filed its certification on the basis that it regulates the rates, terms, and conditions of pole attachments under chapter RCW 80.54. While the Commission has not adopted rules implementing its authority under chapter 80.54 RCW to regulate the rates, terms, and conditions of pole attachments, given the statutory scheme in Washington state, it is clear under Subsection 224(c)(3) that Washington state's regulations governing the rates, terms, and conditions of pole attachments apply in this matter. Thus, Qwest must comply with Washington statutes on pole attachments, or the rates negotiated in interconnection agreements, in order to meet its burden under Section 271(c)(2)(B)(iii).

B. Evidentiary Requirements

14 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 3. The general requirements are set forth in Appendix A to this Order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 3 are:

1. How is U S WEST providing nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates?

2. Does U S WEST provide the same access to these facilities to [competitive local exchange carrier] CLECs as it provides itself? Describe how it does so.

3. Does U S WEST make available to CLECs its maps, plats, and other relevant data, and what are the terms and conditions of such availability? Describe how it does so.

4. Describe any municipal (or other type of government) franchise, grant, or additional requirement that affects U S WEST's access to pathways, poles, conduits, and rights-of-way differently from that of unaffiliated carriers.

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[4] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd No. 4 1498 (1992).

5. What is U S WEST's policy for reservation of space for its own use? How does this affect access to rights-of-way of competitors?

6. How many competitors gain access to customer dwellings in multidwelling units, including access to interbuilding cabling?

15 In its testimony, Qwest did not identify the evidentiary requirement that a statement or exhibit referred to or satisfied, as required in the Supplemental Interpretive and Policy Statement. However, Qwest did provide statements in prefiled testimony or facts in its prefiled exhibits that satisfy the evidentiary requirements listed above, with the exception of the requirement to make available to CLECs its maps, plats and other relevant data. A tabular presentation of the requirements, cross-referenced to Qwest's exhibits and testimony, is included in Appendix A to this Draft Initial Order. A dispute between AT&T, WorldCom and Qwest concerning access to private right-of-way agreements is discussed further below.

C. Parties' Positions

1. Qwest

16 Through the Direct Testimony of Thomas R. Freeberg, Qwest states that it satisfies the requirements of Checklist Item No. 3 through the provisions in its interconnection agreements and its SGAT. *Ex. 151-T, at 11.* Qwest describes the processes it uses to provide CLECs access to poles, ducts, conduits and rights-of-way and states that its processes result in nondiscriminatory access, and that its procedures for reserving space on its facilities are processed the same for Qwest retail orders as for wholesale orders. *Id. at 13-17.* Qwest testifies that since 1998, 19 CLECs have requested access to Qwest facilities; that Qwest can provide access in all parts of its Washington service territory; and that it has provisioned access to facilities in a timely manner. *Id. at 18.* Qwest states there has been one written complaint, which it says is not germane to checklist compliance as it involves a request for terms that are more favorable to the CLEC than those required by the FCC or those contained in the CLEC's interconnection agreement. *Id. at 19.* Qwest also testifies that it has provided access to seven CLECs for over 3,300 multiple dwelling units in Washington state. *Id. at 20.*

2. AT&T

17 AT&T, through its witness Kenneth Wilson, discussed several issues that had been raised and resolved in the Arizona 271 workshops. *Ex. 201-T, at 13-16.* Mr. Wilson stated that Qwest had modified its SGAT to address the concerns, or had stated under oath that the concerns were addressed through other sections of the SGAT. Therefore, AT&T concluded that if the same amendments and affirmations were made in Washington, AT&T's issues regarding these items would be resolved in Washington.

18 AT&T also raised issues with respect to CLEC access to relevant plats, maps, engineering reports, and other data, and stated that Qwest should be obligated to provide such information within a period not to exceed 60 days. *Id. at 16.* It objected that the SGAT did not obligate Qwest to comply with all laws regarding construction, installation, modification or placement of poles, ducts, conduits and rights-of-way; that the SGAT required CLECs to obtain authority to occupy rights-of-way without being granted access to Qwest's agreements pertaining to those facilities.

19 AT&T objected to the SGAT section on recovering costs for inspections; on terminating an order "for cause;" and the section setting forth the standards CLECs must meet for access to facilities. *Id. at 18.* AT&T concluded that the SGAT sections noted in Mr. Wilson's testimony must be deleted before Qwest cannot be found in compliance with Checklist Item No. 3.

3. NEXTLINK

20 NEXTLINK submitted the testimony of Kaylene Anderson for this checklist item. Ms. Anderson stated that Qwest's application is deficient in three areas: (1) failure to demonstrate that the rates charged are just and reasonable; (2) inclusion of an application process that imposes unnecessary expenses and delays for inquiries regarding space availability; and (3) various contract and legal issues raised by the SGAT and its attachments. *Id. at 8.*

4. WorldCom

21 Through its witness Thomas Priday, WorldCom states that Exhibit D to the SGAT was inconsistent with the SGAT itself and that WorldCom is working with Qwest on revised SGAT language to address its concerns. It also recommended that any aspects of access to poles, ducts, conduits and rights-of-way that pertain to sub-loops should be considered in the workshops on Checklist Items Nos. 2 and 4. *Ex. 186-T, at 4-5.* Mr. Priday also raised an issue concerning Section 10.8.1.4 of the SGAT.

D. Qwest Response

22 Qwest responded to parties through the Rebuttal Testimony of Mr. Freeberg. *Ex. 157-T.* Mr. Freeberg stated that it had accepted amended language to the SGAT that satisfied WorldCom's concerns, pointed out that the Washington SGAT did not contain Section 10.8.1.4, and that therefore WorldCom's complaint regarding that section was baseless. *Id. at 7.*

23 Mr. Freeberg testified that Qwest believed it would be able to work with AT&T regarding its concerns with the SGAT language raised by Mr. Wilson. Mr. Freeberg

also stated that Qwest agreed with the recommendation to defer the issue of multiple dwelling unit sub-loops to the workshop on Checklist Items Nos. 2 or 4. *Id. at 8.*

24 In response to the concerns raised by NEXTLINK, Mr. Freeberg confirmed that Qwest had provided cost support information to NEXTLINK. *Id. at 9.* With respect to the unauthorized attachment penalties contained in the SGAT, Qwest stated that penalties higher than $200 in the Washington SGAT were found acceptable in Oregon and have been incorporated into proposed Oregon Administrative Rules. *Id. at 10.* On field verifications, Qwest states that field verifications are almost always necessary to provide the level of information needed for inquiries regarding pole, conduit, and duct attachments. *Id. at 11.* In answer to NEXTLINK's concern regarding the unilateral ability to raise rates as reflected in the SGAT exhibits, Qwest points out that NEXTLINK, as a party to an interconnection agreement with Qwest, would not be subject to the provisions in the attachment, identified as Section 4.2 of Attachment 3 to Exhibit D of the SGAT. *Id. at 12-13.*

E. Verification of Compliance:

25 During the workshop sessions, two issues arose concerning Qwest's compliance with Checklist Item No. 3. First, AT&T and WorldCom argued that Qwest must make available copies of right-of-way agreements Qwest has negotiated with private landowners to allow competitors nondiscriminatory access to the rights-of-way owned or controlled by Qwest. Second, AT&T, WorldCom, and other CLECs asserted that Qwest must respond within 45 days to CLEC requests for access to poles, ducts, conduit, and rights-of-way, even for extensive or large requests.

26 The parties discussed both matters on the record during the workshops as well as during informal discussions between the June and July workshop sessions. At the conclusion of the July 6 follow-up workshop session, the parties had reached an impasse on the time within which Qwest must respond to requests. The parties intended to engage in further discussions on the issue of access to private right-of-way agreements. In order to allow Staff to prepare a complete draft report, the bench requested the parties to discuss the issue in briefs and report later if they have reached an agreement on the issue.

27 Aside from these two issues in dispute, all parties agreed that Qwest had met the requirements of Checklist Item No. 3. Given that the parties are in agreement we agree to defer the issue of access to multiple dwelling unit sub-loops to the workshop for Checklist Item Nos. 2 or 4. This issue will be discussed at the August 29, 2000 prehearing conference. Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated its compliance with Checklist Item No. 3, subject to resolution of the sub-loop issue, as well as resolution of the two issues in dispute below.

F. Private Right-of-Way Agreements

1. AT&T/WorldCom Position

28 AT&T and WorldCom (Joint Intervenors) argue that Qwest should disclose, upon request, right-of-way (ROW) contracts and easements that Qwest has entered into with private building and property owners to allow CLECs nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Qwest. The Joint Intervenors argue that the FCC has required RBOCs to make all maps, plats, and all relevant data available for inspection and copying by a CLEC requesting access.[5] The Joint Intervenors assert that access to the agreements is "integral to assuring that [Qwest] provides nondiscriminatory access to ROW at just and reasonable rates." *Joint Position and Brief Regarding Right-of-Way Contracts, at 13.*

29 The Joint Intervenors assert that Qwest, as the historically dominant local telephone utility in Washington state, has authority to exercise powers of eminent domain to obtain necessary ROW access. The Joint Intervenors note that Qwest has traditionally not used its right of eminent domain, but has instead negotiated numerous agreements with private landowners. Some of these agreements are formally recorded in county real property records, but others may be less formal, unrecorded documents. By refusing to provide access to the documents, the Joint Intervenors argue that Qwest violates the requirement for nondiscriminatory access requiring CLECs to test through litigation whether Qwest has ownership or control over an agreement, and puts CLECs and property owners in an awkward position of numerous and costly ROW negotiations or eminent domain proceedings.

30 The Joint Intervenors argue that Qwest has ownership or control over the ROWs granted through private contracts and easements. By failing to disclose the agreements, Qwest frustrates the CLECs' ability to determine the nature and scope of Qwest's ownership and control, and requires CLECs to negotiate with land-owners without the necessary knowledge about the existing agreement. They assert that Qwest's failure to provide access to the agreements is anti-competitive behavior, and that requiring Qwest to provide access to the agreements will level the playing field for parties negotiating ROW agreements. The Joint Intervenors also express concern that, if Qwest has no obligation to reveal the ROW agreements, that it will have no incentive to avoid entering into agreements that "explicitly or implicitly discriminate against other competitors or create exclusivity arrangements." *Joint Brief at 7.*

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[5] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile radio Service Providers*, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, ¶ 1223 (rel. Aug. 8, 1996) (*First Report and Order*).

31 Finally, the Joint Intervenors note that Qwest has made a proposal in Colorado to resolve this issue by providing a quit-claim deed to the CLEC and requiring the CLEC to negotiate with the landowner to obtain consent to view the agreement before Qwest will provide access to the agreement. The Joint Intervenors state that they are reviewing the proposal, but object to the cost of the proposal and the requirement to obtain consent from the landowner before obtaining access to the document. The Joint Intervenors argue that Qwest's proposal reveals the company's cynical approach to local competition. *Joint Brief at 12.*

2. Qwest Position

32 Qwest asserts that the FCC has determined, with respect to private agreements, that the scope of a utility's ownership or control of an "easement or right-of-way is a matter of state law." *First Report and Order, ¶ 1179.* Qwest also asserts that the FCC declined to "structure general access requirements where the resolution of conflicting claims as to a utility's ownership or control depends on variables that cannot now be ascertained." *Id.* Qwest further quotes the FCC as stating "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit access." *Id.*

33 Qwest denies that it has ownership or control over private ROW agreements, asserting that it is the private landowner who controls access. Qwest asserts that the FCC has stated that where a local exchange carrier has neither ownership nor control over the right-of-way, the carrier has no obligation to obtain access on behalf of the requesting carrier.[6]

34 To satisfy the concerns of the Joint Intervenors, Qwest proposes a process by which "Qwest will agree to provide both redacted copies of such agreements, *and* quitclaim the right to use such real property rights to their fullest extent possible, on the condition that the CLECs obtain the consent of the landowner to place the MDU agreement in the public domain and agree to other reasonable protections of Qwest's real property rights." *Qwest's Legal Brief Regarding Disputed Workshop Issues, at 4.* Qwest believes that this process satisfies its obligations under Checklist Item No. 3.

3. Discussion

35 The Joint Intervenors and Qwest continue to negotiate this issue. While we hope the

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[6] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266, ¶ 38 (rel. Oct. 26, 1999) (*Order on Reconsideration).*

parties reach a mutually satisfactory agreement, after reviewing the parties' arguments, we believe that Qwest must provide CLECs access to private right-of-way agreements in a manner that is the least costly and burdensome to the CLECs.

36 Qwest denies that it has ownership or control over ROWs established in agreements Qwest negotiated with private parties. Qwest further asserts that whether it has ownership or control is a matter of state law to be determined on a case-by-case basis. Regardless of whether Qwest has ownership or control, the FCC has required RBOCs to provide access to its maps, plats and other relevant data to avoid "the need for costly discovery in pursuing a claim of improper denial of access." *First Report and Order, ¶1223.*

37 Qwest further argues that access to private ROW agreements should not be an issue in determining its compliance with Section 271(c)(2)(B). Qwest is not correct. One of the evidentiary requirements Qwest must meet to establish its compliance with Checklist Item No. 3 is whether Qwest makes available to CLECs its maps, plats, and other relevant data. This is also an FCC requirement in the *First Report and Order. Id.* By failing to make available to CLECs private ROW agreements to which Qwest has access, Qwest creates unnecessary barriers to competition by requiring CLECs to negotiate with private landowners without knowing the terms of Qwest's agreement, and requiring CLECs to engage in potentially costly proceedings with both Qwest and the landowner to obtain eminent domain or right-of-way access.

38 On August 4, 2000, the parties submitted a schedule for negotiating this issue. We encourage the parties to continue their discussions. While the parties may reach an agreement on this issue, it appears that any agreement must allow for reasonable access to private right-of-way agreements. The issue appears to be access to an agreement to determine whether the CLEC wishes to gain access to an existing ROW. The CLEC cannot make this determination without seeing the document. Qwest's current proposal for providing a quitclaim deed, and requiring CLECs to obtain landowner consent before viewing the document, as well as pay significant fees before viewing the document, places an unreasonable and significant burden on CLECs. Qwest's existing proposal is not acceptable, and does not meet the requirements under Section 271(c)(2)(B) for nondiscriminatory access to ROWs.

G. Time for Qwest to Respond to Requests for Access

1. AT&T/WorldCom/Joint CLEC Position

39 AT&T, WorldCom, and the Joint CLECs (NEXTLINK, ELI, and ATG) object to provisions in Qwest's proposed SGAT in which Qwest proposes to provide access to pole attachments or a response to a request for access within 45 days for "standard inquiries" of "one hundred (100) poles or fewer, thirty (30) utility hole sections or fewer, or two (2) miles of linear ROW or less." *See SGAT Exhibit D, Sections 2.1 and 2.2.* For larger requests, Qwest proposes response times of up to 115 days, and

for requests of more than 500 poles, 150 manholes, or 10 miles of linear ROW, Qwest proposes that the time limit be negotiated. *Id.* AT&T, WorldCom, and the Joint CLECs assert that the FCC's rules require RBOCs to respond to requests for access to poles, ducts, conduits, and rights-of-way within 45 days, regardless of the size of the request: "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day." *47 C.F.R. § 1.403.3(b).*

40 AT&T and WorldCom assert that the FCC has already addressed the issue of how RBOCs must handle large orders in *In the Matter of Cavalier Telephone, L.L.C. v. Virginia Electric and Power Company*, Order and Request for Information, DA 00-1250, File No. PA 99-005, (rel. June 7, 2000). In that case, the FCC stated:

> Our rules require Respondent to grant or deny access within 45 days of receiving a complete application for a permit. . . . We have interpreted the Commission's Rules, 47 CFR § 1.1403(b), to mean that a pole owner "must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted." We conclude that Respondent is required to act on each permit application submitted by Complainant within 45 days of receiving the request. To the extent that a permit application includes a large number of poles, respondent is required to approve access as the poles are approved, so that complainant is not required to wait until all poles included in a particular permit are approved prior to being granted any access at all. Respondent shall immediately grant access to all poles to which attachment can be made permanently or temporarily, without causing a safety hazard, for which permit applications have been filed with Respondent for longer than 45 days.

Cavalier Telephone, ¶ 15.

41 AT&T, WorldCom, and the Joint CLECs assert that until Qwest modifies its SGAT to provide a response time of no longer than 45 days, no matter the size of the request, Qwest is not in compliance with Checklist Item No. 3.

2. Qwest Position

42 Qwest disputes that the FCC has set a flat 45 day response time for all requests. Qwest argues that the FCC rule, 47 C.F.R. § 1.403(b), does not address the size of the request, and "can easily be interpreted to mean that a utility must respond to a request for access to a single pole or manhole within 45 days." *Qwest's Legal Brief, at 14.*

43 Qwest also argues that its SGAT provision is a very reasonable one, and that WorldCom agreed to the SGAT language during similar workshops in the state of Arizona. Qwest believes WorldCom should be bound by its agreement and should

not be allowed to "unravel" its agreement with Qwest.

3. Discussion

44 The Commission must determine whether Qwest is in compliance with the requirements of Checklist Item No. 3, including any FCC's rules and regulations and orders in effect at the time the application was filed. See *SBC Texas Order, at 22.* While Qwest is correct that the FCC rule does not specify whether the 45 day requirement applies to a request for a single pole or manhole, the rule can also be reasonably interpreted to refer to requests for a number of poles or manholes. The FCC has in fact interpreted the rule in that way. Although the *Cavalier Telephone* decision was decided after Qwest filed its application with the Commission, the FCC's decision on the matter is eminently reasonable.

45 While Qwest may object to WorldCom walking away from an earlier agreement, WorldCom's action does not affect this decision. This proceeding is not an arbitration. In this proceeding, we must determine whether Qwest's SGAT and Interconnection Agreements and actions are in compliance with the Checklist Item and FCC rules and regulations. Qwest is not in compliance with Checklist Item No. 3 until it modifies its SGAT to provide a response to requests for poles, ducts, conduits, and rights-of-way within 45 days of receiving a completed application.

IV. CHECKLIST ITEM NO. 7(i) - 911 AND E911 SERVICES

A. FCC Requirements

46 Section 271(c)(2)(B)(vii) of the Act requires "nondiscriminatory access to - - (I) 911 and E911 services." In its *Ameritech Michigan Order*, the FCC found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."[7]

B. Evidentiary Requirements

47 In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission identified several general and several specific evidentiary requirements Qwest must meet in order to be considered in compliance with Checklist Item No. 7. The general requirements are listed in Appendix A to this Order. The requirements specific to Checklist Item No. 7 are:

1. How is U S WEST providing nondiscriminatory access to 911 and E911 services? Directory assistance services? Operator call completion services?

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[7] *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ¶ 256 (*Ameritech Michigan Order*).

reports are currently being issued on measurements of this test metric. This item (WA 9-3) is conditionally closed pending the review of the audited results of the region-wide test.

D. Qwest Response

122 Qwest indicated there had been problems with the reassignment of ported numbers, and referred to similar problems in the Arizona Section 271 proceeding. *Tr. at 187.* Qwest also states that, on occasion, ported numbers were reassigned to other Qwest customers. Similarly, Qwest admitted to problems with making errors in the assignment of new CLEC NXX codes in its own switches. Errors in routing tables make it difficult to complete calls to the new NXX code once it is activated.

123 Qwest agreed to defer the LRN issue and the double assignment of numbers to Checklist Items Nos. 1 and 11 respectively. Qwest also agreed with the conditions placed on metric NP-1 pending audit.

E. Verification of Compliance

124 Qwest provided statements in prefiled testimony or facts in its prefiled exhibits that satisfy the general and evidentiary requirements set forth in the Supplemental Interpretive and Policy Statement.

125 In response to Bench Request No. 22, Qwest indicated it was no longer requiring one LRN per CLEC per rate center, but would permit a single LRN per LATA per CLEC switch. Other parties (AT&T) have indicated that the details of the policy change have not been completely implemented and recommend deferral of this issue to Checklist Item No. 1.

126 Qwest also admits that, on occasion, ported numbers were reassigned to other Qwest customers. Qwest has approached its number assignment administrator and expects the problem to be corrected. Qwest agrees to defer this issue to Checklist Item No. 11.

127 We accept the deferral of the two items (WA 9-1) concerning the assignment of LRNs, and (WA 9-2) on the double assignment of numbers, to Checklist Items Nos. 1 and 11 respectively. The Commission finds Qwest to be in compliance with Checklist Item No. 9, subject to satisfactory audited results of metric NP-1 in the ROC OSS regional tests.

IX. CHECKLIST ITEM NO. 10 - DATABASES AND ASSOCIATED SIGNALING

A. FCC Requirements

128 Section 271(c)(2)(B)(x) requires RBOCs to provide "Nondiscriminatory access to databases and associated signaling necessary for call routing and completion." The Act also includes "databases [and] signaling systems . . . used in the transmission, routing or other provision of a telecommunications service" within the definition of the term "network element." 47 U.S.C. § 153(29). In its *First Report and Order*, the FCC interpreted the Act to require RBOCs to provide unbundled access to call-related databases and signaling systems as network elements.[18] In its *First Report and Order* and in the *UNE Remand Order*, the FCC has required ILECs to provide unbundled access to the following call-related databases: the Line Information Database ("LIDB"), the Toll Free Calling database ("8XX"), the Local Number Portability database ("LNP"), the Advanced Intelligent Network database ("AIN"), calling-name database, and 911 and E911 databases.[19]

129 In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to show that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."[20] The FCC also required BellSouth "to design, create, test, and deploy AIN-based services at the SMS, through a service creation environment, that BellSouth creates to itself."[21]

B. Evidentiary Requirements

130 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 10. The general requirements are listed in Appendix A to this order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 10 are:

1. How is U S WEST providing nondiscriminatory access to databases and associated signaling necessary for call routing and completion?

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[18] *First Report and Order*, ¶¶ 479, 484.

[19] *First Report and Order*, ¶ 484; *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ¶403 (*UNE Remand Order*).

[20] *Second BellSouth Louisiana Order*, at ¶267. *See also SBC Texas Order*, ¶362.

[21] *Id.*, ¶ 272.

2. To which CLECs is U S WEST providing such access, and under what terms, conditions, and rates?

3. Are there any databases that competitors have requested access to that U S WEST is unwilling or unable to supply? Identify the databases and state why U S WEST is unable or unwilling to supply access. Identify the competitors involved.

4. Are there any pending requests for access to databases that U S WEST has not granted or completed? Identify the nature of the request, the competitor involved and the reason(s) why the request has not been granted or completed.

131 Qwest did not identify in its testimony specific references as to what sections of testimony, or which exhibits answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony or facts in its prefiled exhibits that satisfy these evidentiary requirements. Although summarized below, a tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is attached as Appendix A to this Draft Initial Order.

132 A dispute between AT&T, WorldCom, and Sprint (collectively "Joint Intervenors") and Qwest concerning the extent of CLEC access to the InterNetwork Calling Name Database, or ICNAM, under Qwest's proposed SGAT is discussed further below. While the parties addressed the issue in testimony, they have also submitted briefs on the issue.

C. Parties' Positions

1. Qwest

133 Through the testimony and exhibits of witness Margaret S. Bumgarner, Qwest describes its compliance with the requirements of Checklist Item No. 10, and the evidentiary requirements for the checklist item in the Commission's Supplemental Interpretive and Policy Statement. Qwest states that it provides and offers nondiscriminatory access to its signaling network and the following call-related databases: LNP, LIDB, 8XX, ICNAM, AIN, and E911/911, through its interconnection agreements and proposed SGAT. *Ex. 131-T, at 30, 36-38.* Five CLECs currently purchase unbundled signaling links in Washington, two CLECs use the Toll Free calling database, one uses LIDB, and one uses the LNP database. *Id. at 35, 38; Ex. C-140.* While no CLECs currently use the ICNAM or AIN databases in Washington, Qwest offers nondiscriminatory access to the databases through its SGAT. *Ex. 106, § 9.13.1.1; Ex. 131-T, at 38-39.*

134 The terms, conditions, and rates for providing access to databases and associated signaling are set forth either in interconnection agreements or Qwest's proposed SGAT. *Ex. 131-T, at 30, 34-36.* Qwest's technical standards and rules for providing access to databases and signaling are available on Qwest's website, also referred to as Ex. 118. *Id. at 30-31.* Technical standards and publications are listed in Section 21.0 of the SGAT and are included in Exhibits 138, 139, C-149, and 150. Qwest's rates for access to databases and signaling are included in interconnection agreements and its SGAT. *Id. at 30.* Qwest uses prices determined in the Washington Cost Docket, Docket Nos. UT-960369, 960370, and 960371. *Id.*

135 Through its SGAT, Qwest provides and offers access to call-related databases and signaling in the same manner it obtains access itself. *Id. at 34-35, 40-41.* Qwest is subject to performance measures for this checklist item that have been developed by the ROC. *Ex. 141-T, at 18.* Two performance measures, DB-1, and DB-2, are designed to measure the time required to update the database and accuracy of updates. *Id.* Qwest is developing a performance measure for LIDB. *Id.* Qwest notes that testing of the ROC performance measures and third party OSS testing will determine Qwest's compliance with this checklist item.

136 Qwest has received no formal or informal complaints about its provisioning of access to call-related databases and signaling. *Ex. 131-T, at 41.* With the exception of the dispute over access to the ICNAM database, there are no databases or signaling to which CLECs have sought access and Qwest has been unwilling or unable to supply access. *Id. at 39.*

137 Qwest objects to the Joint Intervenors' request that Qwest include language in its SGAT to provide access to the entire ICNAM database as opposed to access on a per-dip or query basis. Qwest asserts that the FCC requires incumbent LECs to provide access to their calling-name databases on a per-query basis only. Both the *First Report and Order* and the *UNE Remand Order* provide that incumbent LECs must provide access "for the purpose of switch query and database response" through the SS7 signaling network. *First Report and Order, ¶ 484; UNE Remand Order, ¶ 402.*

138 Qwest does not dispute that call-related databases are unbundled network elements (UNEs) to which CLECs must have unbundled access. However, in response to the Joint Intervenors' position that access to the entire database is technically feasible and should be provided, Qwest asserts that the standard for "technical feasibility" under 47 U.S.C. § 251 (c)(3) determines only *where* access must be provided, not *what* must be provided.[22] Qwest asserts that it has provided access to the ICNAM database at the signaling transfer point, or STP, a technically feasible point, as required by the FCC. Finally, Qwest asserts that while the FCC has determined that access to call-related databases is necessary and that failure to provide access would impair the

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[22] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391 (1999).

ability of CLECs to provide service, the FCC has required only physical access at the signaling transfer point, and only on a per query basis.[23]

2. Joint Intervenors

139 In their testimony and exhibits, Joint Intervenors AT&T and WorldCom made several recommendations for changes to SGAT language reflecting access to call-related databases and signaling. *Ex. 186-T, at 9-11; Ex. 201-T, at 39-41.* During the June and July workshops, Qwest agreed to each of the recommendations, except for the request for access to the entire ICNAM database. *Ex. 141-T, at 15-17; See also Tr. 225-28; 729.*

140 Because the ICNAM database is a UNE, the Joint Intervenors argue that ILECs must provide access to the entire database to ensure that CLECs do not receive access that is inferior to what Qwest provides itself. The Joint Intervenors do not deny that, in the *UNE Remand Order*, the FCC required ILECs to provide access only on a switched query and database response through the SS7 network. However, they assert that it is technically feasible for Qwest to provide access to the database on a bulk basis. The Joint Intervenors also cite the FCC's *UNE Remand Order* to state that the FCC determined access to call-related databases to be necessary. The Joint Intervenors argue that Qwest does not meet the requirements of Checklist Item No. 10 unless it provides access to the ICNAM database as a whole, rather than on a per-dip or per-query basis.

141 The Joint Intervenors reserve the right to comment on Qwest's performance measures pending audited results of testing of the performance measures. *Tr. at 230.* As discussed above, except for the issue over access to ICNAM, and satisfactory audited results of testing performance measures, the Joint Intervenors agree that Qwest is in compliance with the requirements for Checklist Item No. 10.

D. Verification of Compliance

142 Aside from the issue in dispute about access to the ICNAM database, and pending the results of testing of performance measures DB-1, DB-2 and for the LIDB database, all parties agreed that Qwest had met the requirements of Checklist Item No. 10. The testimony and exhibits of Qwest witness Bumgarner demonstrate that Qwest provides and offers nondiscriminatory access to call-related databases and associated signaling in compliance with the requirements of section 271(c)(2)(B)(x), and the Commission's evidentiary requirements.

143 Qwest properly interprets the FCC's requirements for providing access to call-related

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[23] *UNE Remand Order*, ¶¶ 410-20.

databases and the ICNAM database in particular. In its *First Report and Order*, the FCC provided that "incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network" and that ILECs must provide access "by means of physical access at the STP linked to the unbundled database."[24]

144 In its *UNE Remand Order*, the FCC included calling-name databases, such as the ICNAM, as UNEs with other call-related databases, but retained the same standard for access to the UNE: "[I]ncumbent LECs, upon request, must provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network."[25] Further, the FCC required ILECs to provide access "by means of physical access at the signaling transfer point linked to the unbundled databases."[26]

145 Qwest also properly cites the Supreme Court's interpretation of the term technical feasibility in *AT&T Corp. v. Iowa Utils. Bd.* Qwest has offered access at a technically feasible point - the signaling transfer point - the point at which the FCC has required ILECs to provide access.

146 The Joint Intervenors seek more than the FCC has required of ILECs as of the time Qwest filed its request to provide In-Region interLATA service. In the *SBC Texas Order*, the FCC specifically provided that an RBOC must be in compliance with FCC rules and orders as of the time they make their application.[27] In addition, the FCC noted that during the review process for compliance with checklist items, "inevitably . . . a variety of new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to it competitors" will arise.[28] However, the FCC stated that the Section 271 process is not intended to resolve such disputes.[29]

147 Qwest is in compliance with the requirements of Checklist Item No. 10. Qwest need not modify its SGAT to include access to the entire ICNAM database in order to be in compliance with the requirements of Checklist Item No. 10. The finding that Qwest meets the requirements of Checklist Item No. 10 is subject to reevaluation if testing shows that Qwest fails to meet the relevant performance measurements for call-

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[24] *First Report and Order*, ¶ 484.

[25] *UNE Remand Order*, ¶ 402, 403.

[26] *Id.*, ¶ 410.

[27] *SBC Texas Order*, ¶ 22.

[28] *Id.*, ¶ 23.

[29] *Id.*

related databases and associated signaling.

X. CHECKLIST ITEM NO. 12 - DIALING PARITY

A. FCC Requirements

148 Section 271(c)(2)(B)(xii) of the 1996 Act requires RBOCs to provide "Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."

149 Section 251(b)(3) imposes upon all Local Exchange Carriers:

> The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory listing, with no unreasonable dialing delays.

150 Dialing parity is defined in Section 153(15) of the Act as occurring when:

> a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access codes, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

151 In the *Bell Atlantic New York Order*, the FCC interpreted Section 153(15) to mean that customers of competing carriers must be able to dial the same number of digits as a customer of a RBOC to complete a local telephone call.[30] Also, the FCC expects customers of competing carriers to receive the same quality of service as RBOC customers. *Id.*

B. Evidentiary Requirements

152 Appendix A to the Washington Utilities and Transportation Commission's Supplemental Interpretive and Policy Statement sets forth both general and specific evidentiary requirements Qwest must meet to demonstrate its compliance with

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[30] *Bell Atlantic New York Order*, ¶373

BEFORE THE COLORADO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. 97I-198T** **COMMENTS OF AT&T AND TCG COLORADO ON CHECKLIST ITEMS 3, 7, 8, 9, 10, 12 AND 13**

AT&T Communications of the Mountain States, Inc. and TCG Colorado (collectively "AT&T") hereby file their initial comments on Checklist Items 3 (Poles, Ducts, Conduits and Rights of Way), 7 (911/E911, Directory Assistance, and Operator Services), 8 (White Page Listings), 9 (Number Administration), 10 (Signaling and Associated Data Bases), 12 (Dialing Parity), and 13 (Reciprocal Compensation).

I. INTRODUCTION

The competitive checklist and other requirements of Section 271 prescribe the mechanism by which a Regional Bell Operating Company ("RBOC"), such as U S WEST, may provide in-region interLATA services. Congress properly determined that an RBOC's entry into the long distance market would be anti-competitive unless the RBOC's local market power is "first demonstrably eroded by eliminating barriers to local competition."[1] To demonstrate compliance with Section 271, therefore, U S WEST must show that it has made real, significant, and irreversible steps to open its local market in Colorado, both in statements of polity and in actual implementation of policy.[2] All of the "various methods of entry into the local telecommunications market contemplated by the

[1] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan,* CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 18 ("*Ameritech Michigan Order*").
[2] *Id.*

Act—construction of new facilities, purchase of unbundled network elements, and resale—[must] be truly available"[3] before U S WEST can be found to have actually opened its local markets.

The Federal Communications Commission ("FCC") has concluded that to make a *prima facie* case that it is meeting the requirements of a particular checklist item, U S WEST must:

> demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. The Commission has previously concluded that, to establish that it is "providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[4]

Accordingly, U S WEST must demonstrate that it has a concrete and specific legal obligation to furnish the item. In the context of this proceeding, U S WEST's SGAT must be assessed to determine whether it sets forth a concrete and specific legal obligation to provide each checklist item in a manner that is consistent with the requirements of Sections 271, 251 and 252 of the Federal Telecommunications Act of 1996 ("Act").

Then, it must be determined whether U S WEST is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality. For the checklist items that are under

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[3] *Id. ¶ 21.*
[4] *Bell South Second Louisana Order*, ¶ 54; *Ameritech Michigan Order*, ¶ 110.

consideration in this first workshop, U S WEST has provided limited performance data, in some cases, and proposed metrics, in other cases. Checklist items that have performance metrics in the set include Checklist Items 7, 9 and 10. Performance related issues should not be considered at this time.[5] As the Commission is well aware, performance measurement data is inextricably linked to a discussion of Operational Support System ("OSS") issues. Both performance metrics and the testing of U S WEST's performance is under consideration in the Regional Oversight Committee ("ROC") process established to test U S WEST's OSS. ROC is in the process of developing appropriate performance metrics to measure U S WEST's performance under the standard established by the FCC under Section 271. Once these metrics are established, U S WEST's performance will be measured in the Third Party Testing process to assess U S WEST's compliance with Section 271. As part of this process, an independent third party will audit U S WEST's performance data. This is a critical part of the ROC collaborative process because inconsistent use, collection and examination of data will render the measurements inaccurate.

Allowing the ROC collaborative process to work the development, review and audit of U S WEST's performance measures and data submitted thereunder is critical to the Section 271 proceeding because AT&T's careful examination of U S WEST's performance measurement data in other Section 271 proceedings to date has shown that it is never quite clear what data one is actually looking at with U S WEST performance measurement results and U S WEST does not provide the raw data from which the results

[5] *See Motion for Clarification and Request to Supplement Initial Comments for the First Workshop and for an Extension of Time to File Initial Comments in Other Workshops Pending Resolution of This Motion,* filed by AT&T on May 5, 2000.

were generated. AT&T has discovered through data requests and cross-examination in these proceedings that U S WEST is prone to inconsistent treatment of CLEC and U S WEST internal data, e.g., U S WEST may not include some data when measuring CLEC results but may include it when measuring U S WEST's internal performance, or vice versa. This inconsistent treatment results in potentially erroneous conclusions that U S WEST's performance for CLECs is better than it really is, and that U S WEST's performance to itself and its retail customers is worse than it really is.

ROC recognized the potential for data disputes and appropriately decided that an evaluation of U S WEST's data collection, analysis and reporting processes and a review of U S WEST's actual data is necessary before U S WEST-provided data can be relied upon. Therefore, AT&T believes that Colorado should wait until the ROC performance measurement audit is concluded satisfactorily before it considers any U S WEST-provided performance data. Similarly, Colorado should not approve any particular performance metrics proposed by U S WEST until the ROC performance metric development process is complete. Thus, for purposes of determining U S WEST's compliance with these performance-related checklist items, the Commission should reserve final resolution of these checklist items until the ROC collaborative process is complete and proper performance measure data has been produced and assessed. This is consistent with the approach taken by the Arizona Commission.

Set forth below is an analysis of each checklist item at issue in the first workshop in Colorado. Because AT&T participated in the Arizona Section 271 workshops, many of the concerns AT&T originally had with U S WEST's compliance with this first set of checklist items were resolved in Arizona and incorporated into the revised SGAT filed in

Colorado. To aid the Commission Staff and other parties, AT&T has structured these comments to summarize AT&T's previous concerns and describe how those concerns were resolved. To the extent issues remain disputed in Arizona, AT&T has provided a more detailed explanation of its concerns regarding U S WEST's compliance here in Colorado. Finally in a few limited instances, AT&T has identified new concerns and has detailed those concerns below.

II. ANALYSIS

A. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way.

1. Legal Requirements.

Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[6]

In the *Local Competition Order*, the FCC interpreted section 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.[7] The FCC has reinforced the requirements set out in its *Local Competition Order* in its recent *Order on Reconsideration*.[8] In addition, the FCC more recently interpreted the revised requirements of Section 224 governing rates, terms and conditions for

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[6] *BellSouth Second Louisiana Order*, ¶ 171.

[7] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 99-325 (rel. Aug. 8, 1996) ("*Local Competition Order*").

[8] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Reconsideration, FCC 99-266 (rel. Oct. 26, 1999) ("*Order on Reconsideration*").

telecommunications carriers' attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.[9]

Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[10] Notwithstanding this requirement, Section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[11]

Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[12] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[13] Notwithstanding this general grant of authority, Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." In

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[9] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) ("*Pole Attachment Telecommunications Rate Order*").

[10] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[11] 47 U.S.C. § 224(f)(2).

[12] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

[13] 47 U.S.C. § 224(b)(1).

addition, Section 224 expressly excludes incumbent LECs, such as U S WEST from the class of persons entitled to such access.[14]

In its *Bell South Second Louisiana* decision, the FCC concluded that BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions by demonstrating that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to Section 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

The Commission also concluded that:

> consistent with the Commission's regulations implementing section 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames. Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[15] Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.[16] If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above. [17]

A lack of capacity on a particular facility does not entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC to take all reasonable steps to

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[14] *See* 47 U.S.C. § 224(a)(5) and 224(f)(1) and *Local Competition Order*, ¶ 1231.
[15] *Local Competition Order*, ¶ 1123.
[16] 47 C.F.R. § 1.1403(b).
[17] *BellSouth Louisiana Second*, ¶ 176.

accommodate access in these situations. If a telecommunications carrier's request for access cannot be accommodated due to a lack of available space, a BOC must modify the facility to increase capacity under the principle of nondiscrimination.[18]

2. Status of U S WEST's Compliance.

AT&T raised a number of issues in the Arizona 271 workshop on Checklist Item 3 with respect to U S WEST's policies and the SGAT provisions addressing poles, ducts, conduits, and rights of way. The majority of AT&T's concerns were addressed through revisions made by U S WEST to its SGAT and via representations made by U S WEST in the course of the workshop. The discussion below explains these issues and, in some instances, any steps that need to be taken in Colorado to address these issues.

As an initial matter, however, one provision imported by U S WEST from Arizona into the revised Colorado SGAT is clearly inappropriate in Colorado. In the revised SGAT, U S WEST attempts to impose upon CLECs a reciprocal obligation to provide access to poles, ducts, conduits and rights of way. Specifically, Section 10.8.1.4 specifies that: "the rights, benefits and obligations in this Section 10.8 are reciprocal."[19] The Act and FCC orders obligate U S WEST to provide access to poles, ducts, conduits and rights of way. They do not obligate the CLECs to do the same. To the contrary, Section 224 expressly excludes incumbent LECs, such as U S WEST, from the class of persons entitled to such access.[20] Accordingly, Section 10.8.1 of the SGAT must be revised to remove all requirements for reciprocal access.

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[18] *Local Competition Order*, ¶ 1224.

[19] *See also* Sections 10.8.1.1 and 10.8.1.3. In Arizona, the CLECs agreed to this provision because of the Arizona federal district court had ruled that the Arizona Commission decision requiring reciprocal access did not violate the Act. While the CLECs disagree with this ruling, the parties agreed to this provision subject ultimately to the outcome of their appeal of the ruling in the 9th Circuit Court of Appeals.

[20] *See* 47 U.S.C. § 224(a)(5) and 224(f)(1) and *Local Competition Order*, ¶ 1231.

The remaining issues raised by AT&T and their resolution in Arizona follows. First, in Arizona, AT&T raised concerns that the SGAT did not provide assurances to CLECs that U S WEST will provide access to poles, ducts, conduit and rights-of-way "owned or controlled by" U S WEST, as is required by the Act. Without such assurances, U S WEST would not be legally bound to provide access to the full panoply of poles, ducts, conduits and rights-of-way required by the Act. U S WEST has corrected this concern with revisions to Section 10.8.2.1.

Second, the SGAT failed to acknowledge that U S WEST may only deny a request for access for reasons of safety, reliability and generally applicable engineering purposes, provided these principles are applied in a nondiscriminatory manner.[21] If a CLEC request for access cannot be accommodated due to a lack of available capacity, U S WEST must modify the facility to increase its capacity under the principle of nondiscrimination and must explore accommodation in good faith with the party seeking access.[22] U S WEST revised Section 10.8.2.6 to address this concern.

Third, U S WEST may not reserve space for the provision of telecommunications or video service to the detriment of a new entrant, although the utility may reserve space for its core utility service.[23] The SGAT was completely silent on when and how U S WEST will reserve space for itself. U S WEST revised Section 10.8.2.6 to address this issue.

Fourth, U S WEST did not make any affirmative statement as to what poles, ducts, conduits and rights-of-way will be made available or where those will be made

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[21] 47 U.S.C §224(f)(2); *Local Competition Order*, ¶ 1222.
[22] 47 U.S.C §224(f)(2); *Order on Reconsideration*, ¶ 8.
[23] *Local Competition Order*, ¶ 1120.

available. AT&T asserted that it must be clear that U S WEST is obligated to provide access to all poles, ducts, conduits and rights-of-way, whether on public property, private property or owned property, that is owned or controlled by U S WEST. Similarly, U S WEST makes no affirmative statement about access to Multiple Dwelling Unit ("MDU") and other multiple tenant environments. The FCC has tentatively concluded that the obligations under Section 224 encompass in-building conduit, such as riser conduit, that may be owned or controlled by U S WEST.[24] Availability of space on rooftops of U S WEST buildings and public and private buildings where U S WEST has access was also not mentioned. U S WEST added and revised Section 10.8.1.3 to generically address this issue.

Fifth, the SGAT specifically prohibited CLECs from making splices in the central office manhole, while acknowledging U S WEST's right to do so. U S WEST has amended Section 10.8.2.9 to accommodate this concern.

Sixth, Section 10.8.2.19 of the previous SGAT required CLECs to give up the use of poles, ducts, conduits and rights-of-way when U S WEST decides to abandon those or to buy the poles/innerduct from U S WEST. If U S WEST sells poles or innerduct to another party, the SGAT seemed to preclude the CLECs' right to any ongoing use. This could be very expensive for the CLECs and potentially disruptive to existing service. AT&T asserted that U S WEST should include provisions in any contract for sale of poles, innerduct or rights-of-way that protects existing and continuing CLEC use of the conveyed poles, conduits, ducts or rights-or-way. U S WEST should further protect CLECs' interests in poles, ducts, conduits and rights-of-way when U S WEST sells an

[24] *Promotion of Competitive Networks in Local Telecommunications Market*, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 99-141 (rel. July 7, 1999), ¶ 44.

exchange outright. Section 10.8.2.19 of the SGAT was amended to accommodate these concerns.

Seventh, AT&T and Cox raised concerns regarding U S WEST's provisioning of access to MDUs, expressing concerns regarding the use of exclusive arrangements with MDU and campus business owners/operators that work to exclude CLECs from accessing rights of way of the MDUs and campus businesses. This prevents CLECs from providing competitive service to residential and business customers located within the complexes. In Arizona, the parties agreed to defer this issue to Checklist Item 2 (UNEs), and Checklist Item 4 (Loops and Subloops). AT&T would agree to defer this issue in Colorado to the workshops on Checklist Items 2 and 4. If not, AT&T requests an opportunity to supplement these comments to address these issues, or to discuss its concerns during the scheduled workshops.

Eighth, AT&T expressed concern that numerous requirements associated with the cost of replacement or modification of existing poles, ducts, conducts or innerduct that had been addressed by the FCC were not fully reflected in the SGAT. U S WEST revised Section 10.8.2.10 to conform the cost requirements to the relevant requirements in the FCC Orders.

Ninth, AT&T raised concerns regarding the issue of ownership of innerduct that is placed by a CLEC in an empty U S WEST duct. U S WEST has modified Section 10.8.1.2 of the SGAT to accommodate this concern.

Tenth, U S WEST did not specifically grant access rights to rooftop space on U S WEST buildings. In the Arizona workshops, U S WEST stated that Section 10.8.1.3

includes such access to the extent the space is owned or controlled by U S WEST. U S WEST must make this same acknowledgement in Colorado.

Section 10.8.2.4 fails to obligate U S WEST to provide relevant plats, maps, engineering reports and other data within any time frame if such requests involve the gathering of plats from multiple locations. At a minimum, U S WEST should be obligated to provide such information within a reasonable time period, not to exceed 60 days.

Section 10.8.2.5 ambiguously limits U S WEST's obligations to construct, install, modify or place Poles/Innerduct as required by the Pole Attachment Act of 1934 or as otherwise "expressly" provided in the SGAT. The SGAT should incorporate all other relevant state and municipal laws in this regard. The SGAT should be revised to clarify that U S WEST must comply will all laws, be they federal, state or municipal, that relate to the construction, installation, modification or placement of poles, ducts, conduits and rights-of-way.

In Section 10.8.2.8 U S WEST obligates all CLECs to obtain the necessary authority to occupy ROW and/or Poles/Innerduct. While perfectly appropriate, U S WEST fails to obligate itself to provide agreements as it may have in respect to such ROW or Poles/Innerduct upon the request of the CLEC, thereby unnecessarily hampering the CLEC from concluding its agreement with the owners of these rights. AT&T has experienced situations in its negotiations with municipalities and private owners that provision of such agreements would have greatly accelerated its negotiations and U S WEST has refused to provide them. U S WEST should be affirmatively obligated in

the SGAT to provide upon the request of a CLEC any and all documents relevant to U S WEST rights and obligations concerning a ROW or Poles/Innerduct.

U S WEST, in Section 10.8.2.14, improperly allows itself to recover the costs of any inspection conducted by U S WEST in which a violation, hazard or other breach of the SGAT is detected. There is no materiality standard qualifying this right of recovery, thereby incenting U S WEST to ascertain minor or inconsequential issues to afford itself recovery. U S WEST should only be able to recover its costs of inspection upon verification that a material violation or breach has occurred. Further, in Section 10.8.2.15 and 10.8.2.16, U S WEST sets up the curious dichotomy of requiring CLECs to pay for all inspections during construction and afterwards, but disclosing any liability in respect to such construction and the related inspections. In effect, U S WEST is asking to be paid without assuming any responsibility. Either U S WEST should assume the normal liability associated with inspections or, in the alternative, it should not recover the costs of such inspections.

In Section 10.8.2.18, U S WEST utilizes ambiguity of terms to its benefit. In this section, U S WEST reserves itself the right to terminate an order "for cause" and fails to limit the definition of what constitutes cause. At a minimum, if the drastic remedy of terminating an order is to be vested in U S WEST, the explicit circumstances of when U S WEST may do so needs to be outlined.

Eleventh, in Section 10.8.2.20, U S WEST conditions a CLEC's access to poles, ducts, conduits and rights of way on the "requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the

Occupational Safety and Health Act . . .," all of which are incorporated into the SGAT by reference. This paragraph is problematic in at least two ways. First, this paragraph purports to reconcile potential discrepancies among these standards by requiring that "[w]here a difference in specifications exists, the more stringent shall apply." This provision makes U S WEST's standards regarding access to poles, ducts, conduits and rights of way unreasonably restrictive. A more permissive and procompetitive approach would be to require that the less stringent specification shall apply. Second, this paragraph makes reference to "U S WEST's procedures governing its standard maintenance practices," but the paragraph does not explain these "procedures," does not incorporate such "procedures" into the SGAT by reference (as it does with the others mentioned previously) and, does not make clear whether these "procedures" supplement or supercede the standards mentioned previously. U S WEST has not presented these procedures as evidence in this proceeding. Therefore, there is no way to evaluate the terms and conditions set forth in these procedures. In short, there is no way for this Commission to ascertain whether these procedures are consistent with the law and implementing FCC regulations and orders and are nondiscriminatory. Nor is there any way to determine if the terms and conditions set forth in the document are consistent with the provisions of the SGAT. For this reason alone, U S WEST cannot satisfy checklist item 3. Given U S WEST's reliance on extrinsic standards, which are at least verifiable and the product of known, industry standard development processes, and U S WEST's explicit (if restrictive) process for dealing with conflict among them, U S WEST's reference to additional "procedures" is too vague. This section should be revised.

Based upon the incorporation of the Arizona revised language in the Colorado SGAT and assuming the MDU issue is deferred here as it was in Arizona, the only unresolved issues on Checklist Item 3 relate to U S WEST's imposition of reciprocal access obligations on CLECs and the concerns raised above regarding Section 10.8.2.20. As currently drafted, these provisions are not consistent with the Act and must be rejected. The imposition of these inappropriate obligations must be eliminated before U S WEST can be found in compliance with Checklist Item 3.

B. Checklist Item 7: 911 and E911 Services, Directory Assistance and Operator Services

1. 911/E911 Services

a. Legal Requirements.

Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "nondiscriminatory access to – (I) 911 and E911 services."[25] In the *Ameritech Michigan Order*, the Commission found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access *i.e.*, at parity."[26]

In the *BellSouth Second Louisiana Order*, the FCC reconfirmed the 911/E911 checklist obligations it established in the *Ameritech Michigan Order*, stating that:

> [S]ection 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity.[27]

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[25] 47 U.S.C. § 271(c)(2)(B)(vii).

[26] *Ameritech Michigan Order*, ¶ 256. *See also Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999), ¶ 349 ("*Bell Atlantic New York Order*").

[27] *BellSouth Second Louisiana Order*, ¶ 235 (citing *Ameritech Michigan Order*, ¶ 256).

DATED this 8th day of May, 2000.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND TCG COLORADO

By: _____

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 823

In the Matter of the Investigation of the Entry of U S WEST Communications, Inc. into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996.	))))))

DIRECT TESTIMONY OF

DOMINICK SEKICH

ON BEHALF OF

AT&T COMMUNICATIONS

OF THE PACIFIC NORTHWEST, INC.

AND AT&T LOCAL SERVICES

ADDRESSING

ACCESS TO POLES, DUCTS, CONDUIT AND RIGHTS OF WAY

June 30, 2000

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I. STATEMENT OF QUALIFICATIONS, SCOPE AND SUMMARY

Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Dominick Sekich. I am a Senior Attorney with AT&T Corp. My business address is 1875 Lawrence Street, Denver, Colorado 80202. I am filing this testimony on behalf of AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T").

Q. PLEASE REVIEW YOUR EDUCATION AND RELEVANT WORK EXPERIENCE.

A. I received a BA from Colorado College in 1987 and a J.D. from Georgetown University in 1991. I have practiced law in private firms and with AT&T Corp. I have been employed by AT&T Corp. as a lawyer since 1996.

I have been involved in AT&T's State Law and Government Affairs Department since 1996, primarily serving as a commercial lawyer. I have negotiated numerous interconnection agreements and amendments to interconnection agreements with U S WEST. I have supported AT&T's efforts in arbitrating interconnection agreements. In addition, I have counseled my client on numerous issues related to interconnection, resale and purchase of unbundled elements.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to review the terms and conditions under which U S WEST offers new entrants in Oregon checklist item 3, nondiscriminatory access to

poles, ducts, conduits and rights of way, established under Section 271 of the Telecommunications Act of 1996 (the "Act"). Mr. Ken Wilson will address the remaining checklist items that are at issue in this workshop for AT&T.

Q. WHAT IS THE STANDARD AGAINST WHICH U S WEST'S PERFORMANCE MUST BE MEASURED UNDER SECTION 271?

A. The competitive checklist and other requirements of Section 271 prescribe the mechanism by which a Regional Bell Operating Company ("RBOC"), such as U S WEST, may provide in-region interLATA services. Congress properly determined that an RBOC's entry into the long distance market would be anti-competitive unless the RBOC's local market power is "first demonstrably eroded by eliminating barriers to local competition."[1] To demonstrate compliance with Section 271, therefore, U S WEST must show that it has made real, significant, and irreversible steps to open its local market in Oregon, both in statements of policy and in actual implementation of policy.[2] All of the "various methods of entry into the local telecommunications market contemplated by the Act -- construction of new facilities, purchase of unbundled network elements, and resale -- [must] be truly available,"[3] in the manner proscribed by the Act, the Federal Communications Commission ("FCC") regulations and orders and state commissions before U S WEST can be found to have actually opened its local markets.

The FCC has concluded that to make a *prima facie* case that it is meeting the

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[1] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 18 (*"Ameritech Michigan Order"*).
[2] *Id.*
[3] *Id.*, ¶ 21.

requirements of a particular checklist item, an RBOC must:

> demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. The Commission has previously concluded that, to establish that it is "providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[4]

Accordingly, U S WEST must demonstrate that it has a concrete and specific legal obligation to provide each checklist item in a manner that is consistent with the requirements of Sections 271, 251 and 252 of the Act. To meet this burden, U S WEST must demonstrate that its legal obligations have been met through its Oregon-approved interconnection agreements ("ICAs") or U S WEST may rely on its Statement of Generally Available Terms ("SGAT") for elements and services not otherwise dealt with in the ICAs.

Second, it must be determined whether U S WEST is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.

Q. SHOULD U S WEST'S PERFORMANCE UNDER CHECKLIST ITEM NUMBER 3 (THE SECOND PRONG OF THE ANALYSIS) BE ASSESSED AT THIS TIME?

A. No. While a number of the Checklist Items at issue in this workshop have performance metrics and U S WEST has provided limited performance data, in some cases, and

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[4] *Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana*, CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 54 (*"BellSouth Second Louisiana Order"); Ameritech Michigan Order*, ¶ 110.

proposed metrics, in other cases, for all of the checklist items at issue here, performance-related issues should not be considered at this time. Performance related issues should not be considered until OSS testing is complete.[5] The results of the OSS test encompass all performance measures related to all checklist items, and any evaluation of performance should await completion of the OSS test that governs that performance.

Q. WHY SHOULDN'T THE COMMISSION CONSIDER PERFORMANCE NOW?

A. Performance measurement data is inextricably linked to a discussion of Operational Support System ("OSS") issues. Both performance metrics and the testing of U S WEST's performance is under consideration in the Regional Oversight Committee ("ROC") process established to test U S WEST's OSS. ROC is in the process of developing appropriate performance metrics to measure U S WEST's performance under the standards established by the FCC under Section 271. Once these metrics are complete, U S WEST's performance will be measured in the Third Party Testing process to assess U S WEST's compliance with Section 271. As part of this process, an independent third party will audit U S WEST's performance data. This is a critical part of the ROC collaborative process because inconsistent use, collection and examination of data will render the measurements inaccurate.

Allowing the ROC collaborative process to complete the development, review and audit of U S WEST's performance measures and data submitted thereunder is critical because AT&T's careful examination of U S WEST's performance measurement data in other

[5] *Order Adopting Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements,* Docket No. UT- 970300, p. 8.

Section 271 proceedings to date has shown that it is often unclear what data U S WEST is actually reporting. One problem is that U S WEST does not provide the raw data from which its results are generated. AT&T has discovered through data requests and cross-examination in these proceedings that U S WEST is prone to inconsistent treatment of CLEC and U S WEST internal data, e.g., U S WEST may not include some data when measuring CLEC results but may include it when measuring U S WEST's internal performance, or vice versa. This inconsistent treatment results in potentially erroneous conclusions that U S WEST's performance for CLECs is better than it really is, and that U S WEST's performance to itself and its retail customers is worse than it really is.

ROC recognized the potential for data disputes and appropriately decided that an evaluation of U S WEST's data collection, analysis and reporting processes, and a review of U S WEST's actual data, is necessary before U S WEST-provided data can be relied upon. Therefore, the Oregon Commission should wait until the entire ROC OSS test is concluded satisfactorily before it considers any performance data. Similarly, the Oregon Commission should not approve any particular performance metrics proposed by U S WEST until the ROC performance metric development process is complete. Thus, for purposes of determining U S WEST's compliance with these performance-related checklist items, the Commission should reserve final resolution of these checklist items until the ROC collaborative process is complete and proper performance measurement data has been produced and assessed. This is consistent with the approach taken by the Arizona, Colorado and Washington Commissions.

Q. PLEASE SUMMARIZE YOUR TESTIMONY REGARDING THESE CHECKLIST ITEMS.

A. In its testimony, U S WEST relies exclusively on its SGAT when describing how it complies with these checklist items. U S WEST has readily conceded that many of its checklist obligations are not satisfied by provisions in its approved ICAs, particularly obligations that stem from more recent FCC orders.[6] Accordingly, from purely an ICA standpoint, U S WEST has not met its burden of proof.

Instead, U S WEST's testimony focuses entirely on its SGAT to demonstrate compliance with these checklist obligations. This is the approach that U S WEST has taken in other states, as well. Therefore, the focus of AT&T's testimony will be to analyze whether the SGAT submitted by U S WEST sets forth the concrete and specific legal obligations to furnish these seven checklist items. In fact, AT&T and U S WEST have engaged in extensive negotiations in other state workshops to address the concerns AT&T has raised regarding the SGAT's compliance with Section 271 for the checklist items at issue. The parties have made considerable progress in those negotiations and many of AT&T's concerns have been addressed by revisions that have been incorporated into the SGAT that U S WEST has filed in Oregon. Still more revisions have been made to the SGAT as a result of ongoing discussions between the parties. These latter revisions have not yet been submitted in Oregon. However, despite significant progress on many issues, there

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[6] *See* U S WEST's Comments Regarding Its Statement of Generally Available Terms and Conditions, *In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996,* Docket No. UT-003040, pp. 2-3, 4, dated May 17, 2000 ("*U S WEST SGAT Comments*") ("The SGAT, unlike current Commission approved interconnection agreements, (which in many instance are years old), contains provisions for new services per recent FCC's (sic) orders, such as line sharing, high capacity loops, and UNE combinations.") ("The SGAT is the most up-to-date statement of U S WEST's legal obligations under section 271...").

remain disputed issues on several checklist items. In addition, certain issues raised by AT&T have been deferred to other checklist items. Specifically, access to rights of way in connection with access to subloops/MDUs was deferred to Checklist Items 2 and 4, LRN issues were deferred to Checklist Item 1, number porting issues and their impact on access to 911 were deferred to Checklist Item 11, and issues surrounding the reassignment of ported numbers to U S WEST customers was deferred to Checklist Item 11. These issues should also be deferred in Oregon.

To aid the Commission, Commission Staff and other parties, my testimony has been structured to summarize AT&T's previous concerns and describe how those concerns have been resolved in the course of the various Section 271 workshops. To the extent issues remain disputed, AT&T has provided a more detailed explanation of its concerns regarding U S WEST's compliance for those issues.

Q. FOR THOSE ITEMS WHERE AT&T IS SATISFIED THAT THE SGAT REFLECTS AN APPROPRIATE LEGAL OBLIGATION, IS THAT SUFFICIENT TO SHOW THAT U S WEST HAS SATISFIED SECTION 271 FOR THAT CHECKLIST ITEM?

A. No. First, while the SGAT may reflect an appropriate legal obligation, U S WEST must also demonstrate that it has satisfied the second prong of the Section 271 analysis by presenting evidence that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality. This is the performance-related evidence that will be established as part of later proceedings once the ROC testing is completed.

In addition, because the SGAT has not yet been approved by the Commission, it has merely been allowed to go into effect, it cannot be relied upon to satisfy U S WEST's legal obligation.

Further, although U S WEST claims that CLECs can "opt into" the provisions in its SGAT, it only allows them to do so if the provision does not otherwise "lose its context" or so long as the CLEC "maintains the context."[7] As a result, U S WEST has substantial and unfettered discretion to deny CLECs' request to pick portions of the SGAT and make them part of their interconnection agreement. Incorporation of portions of the SGAT into CLEC interconnection agreements must be liberally permitted in order for U S WEST to be truly "offering" any particular service or network element. To that end, AT&T has been negotiating "pick and choose" procedures with U S WEST that AT&T will ultimately recommend be incorporated into the SGAT.

II. U S WEST'S COMPLIANCE FILING

A. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way.

Q. WHAT MUST U S WEST PROVE TO DEMONSTRATE COMPLIANCE WITH CHECKLIST ITEM 3?

A. Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."[8]

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[7] *U S WEST SGAT Comments*, p. 4.
[8] *BellSouth Second Louisiana Order*, ¶ 171.

In the *Local Competition Order*, the FCC interpreted section 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.[9] The FCC has reinforced the requirements set out in its *Local Competition Order* in its recent *Order on Reconsideration*.[10] In addition, the FCC more recently interpreted the revised requirements of Section 224 governing rates, terms and conditions for telecommunications carriers' attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.[11]

Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[12] Notwithstanding this requirement, Section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[13]

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[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 99-325 (rel. Aug. 8, 1996) *("Local Competition Order")*.
[10] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 99-266 (rel. Oct. 26, 1999) *("Order on Reconsideration")*.
[11] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) *("Pole Attachment Telecommunications Rate Order")*.
[12] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).
[13] 47 U.S.C. § 224(f)(2).

Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[14] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[15] Notwithstanding this general grant of authority, Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." In addition, Section 224 expressly excludes incumbent LECs, such as U S WEST from the class of persons entitled to such access.[16]

In its *Bell South Second Louisiana* decision, the FCC concluded that BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions by demonstrating that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to Section 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

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[14] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

[15] 47 U.S.C. § 224(b)(1).

[16] See 47 U.S.C. § 224(a)(5) and 224(f)(1) and *Local Competition Order*, ¶ 1231.

The FCC specifically concluded that:

> consistent with the Commission's regulations implementing section 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames. Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[17] Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.[18] If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above.[19]

A lack of capacity on a particular facility does not entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC to take all reasonable steps to accommodate access in these situations. If a telecommunications carrier's request for access cannot be accommodated due to a lack of available space, a BOC must modify the facility to increase capacity under the principle of nondiscrimination.[20]

Q. DOES U S WEST HAVE THE LEGAL OBLIGATION IN ITS ICAS OR SGAT TO PROVIDE NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS OF WAY?

A. No. While the language in AT&T's and U S WEST's ICA is fairly encompassing, it does not reflect all of the new obligations that have been established by the FCC in more recent orders.[21] Similarly, the TCG ICA does not include the mandate of recent FCC

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[17] *Local Competition Order*, ¶ 1123.
[18] 47 C.F.R. § 1.1403(b).
[19] *BellSouth Second Louisiana Order*, ¶ 176.
[20] *Local Competition Order*, ¶ 1224.
[21] *See, e.g, Order on Reconsideration.*

orders, and less extensive language relating to access to poles, ducts conduits, and rights of way.

With respect to the SGAT, AT&T and MCI raised a number of issues in the Arizona, Colorado and Washington 271 workshops regarding the SGAT's provisions addressing access to poles, ducts, conduits, and rights of way. The majority of AT&T's concerns were addressed through revisions made by U S WEST to its SGAT and via representations made by U S WEST in the course of the workshop. The discussion below explains these issues and, in some instances, any steps that need to be taken in Oregon to address these issues. In addition, there remain several disputed issues that have not been resolved to date. I address those issues as well below.

Q. PLEASE SUMMARIZE THE ISSUES THAT WERE RAISED BY AT&T IN THE OTHER STATES ON THIS CHECKLIST ITEM AND HOW THEY WERE RESOLVED.

A. First, in the other state workshops, AT&T raised concerns that the SGAT did not provide assurances to CLECs that U S WEST will provide access to poles, ducts, conduit and rights-of-way "owned or controlled by" U S WEST, as is required by the Act. Without such assurances, U S WEST would not be legally bound to provide access to the full panoply of poles, ducts, conduits and rights-of-way required by the Act. U S WEST has addressed this concern with revisions to Sections 10.8.1.1 and 10.8.1.2.

However, AT&T has requested that U S WEST further clarify this obligation by including language that demonstrates that in the event U S WEST exercises its control either directly or indirectly, AT&T will be afforded the requisite access and/or rights and

the means to determine those rights. In AT&T's experience in acquiring rights with building owners, U S WEST may exercise a degree of indirect control over the building owner, so that for all intents and purposes, U S WEST is in ultimate control of access to such poles, ducts, conduits and rights of way. The language requested by AT&T clarifies that in these circumstances U S WEST may not avoid its responsibilities by arguing that U S WEST lacks any direct control. The SGAT provides that U S WEST must provide access to ROW, conduit, etc. that U S WEST owns or controls. However, the SGAT provides no means to determine when U S WEST owns or controls such access. Issues have arisen that demonstrate the need for CLECs to have access to the agreements that U S WEST has with private landowners and building owners in order to determine the scope of U S WEST' ownership and control. For example, a CLEC may be given access to ROWs or conduit by a building owner based upon the representation of the building owner that he/she controls such access. U S WEST disconnects the CLEC's facilities and disrupts customer service, claiming that U S WEST controls the conduit and the CLEC has no authorization to place facilities in the conduit. Absent access to the agreement, the CLEC has no means to protect its facilities and customer service. It has no way to determine who owns or controls the conduit. A solution would be to allow for CLEC access to the agreements before the CLEC facilities are installed so that a proper determination of ownership and control can be established. This proposed requirement is discussed in greater detail below in my discussion of remaining issues with the SGAT language.

Second, in Section 10.8.1.2, AT&T raised concerns regarding the issue of ownership of innerduct that is placed by a CLEC in an empty U S WEST duct. U S WEST has

modified Section 10.8.1.2 of the SGAT to accommodate this concern. However, as described below, AT&T has other concerns about U S WEST's SGAT Section 10.8.1.2.

Third, U S WEST did not specifically grant access rights to rooftop space on U S WEST buildings. In the Arizona workshops, U S WEST stated that Section 10.8.1.3 includes such access to the extent the space is owned or controlled by U S WEST. With this confirmation, AT&T considers this issue resolved, subject to the control determination addressed above.

Fourth, Section 10.8.2.4 previously obligated U S WEST to provide relevant plats, maps, engineering reports and other data within any time frame if such requests involve the gathering of plats from multiple locations. At a minimum, U S WEST should be obligated to provide such information within a reasonable time period, not to exceed 60 days. In recent workshops in other jurisdictions U S WEST has proposed changes to Section 10.8.2.4 to correct this issue.

Fifth, Section 10.8.2.5 ambiguously limited U S WEST's obligations to construct, install, modify or place Poles/Innerduct as required by the Pole Attachment Act of 1934 or as otherwise "expressly" provided in the SGAT. U S WEST has agreed in other state workshops to incorporate all other relevant state and municipal laws in this regard, and AT&T expects U S WEST to do the same in Oregon.

Sixth, the SGAT failed to acknowledge that U S WEST may only deny a request for access for reasons of safety, reliability and generally applicable engineering purposes,

provided these principles are applied in a nondiscriminatory manner.[22] If a CLEC request for access cannot be accommodated due to a lack of available capacity, U S WEST must modify the facility to increase its capacity under the principle of nondiscrimination and must explore accommodation in good faith with the party seeking access.[23] U S WEST revised Section 10.8.2.6 to address this concern.

Seventh, U S WEST may not reserve space for the provision of telecommunications or video service to the detriment of a new entrant, although the utility may reserve space for its core utility service.[24] The SGAT was completely silent on when and how U S WEST will reserve space for itself. U S WEST revised Section 10.8.2.6 to address this issue.

Eighth, U S WEST did not make any affirmative statement as to what poles, ducts, conduits and rights-of-way will be made available or where those will be made available. AT&T asserted that it must be clear that U S WEST is obligated to provide access to all poles, ducts, conduits and rights-of-way, whether on public property, private property or owned property, that is owned or controlled by U S WEST. Similarly, U S WEST makes no affirmative statement about access to Multiple Dwelling Unit ("MDU") and other multiple tenant environments. The FCC has tentatively concluded that the obligations under Section 224 encompass in-building conduit, such as riser conduit, that may be owned or controlled by U S WEST.[25] Availability of space on rooftops of U S WEST buildings and public and private buildings where U S WEST has access was also not

[22] 47 U.S.C §224(f)(2); *Local Competition Order*, ¶ 1222.
[23] 47 U.S.C §224(f)(2); *Order on Reconsideration*, ¶ 8.
[24] *Local Competition Order*, ¶ 1120.
[25] *Promotion of Competitive Networks in Local Telecommunications Market*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, FCC 99-141, ¶ 44 (rel. July 7, 1999).

mentioned. U S WEST has proffered a revisions of Section 10.8.1.3 to generically address this issue. However, as will be addressed below, U S WEST's proposal has only addressed part of this issue, and AT&T and other CLECs have additional concerns.

Ninth, the SGAT specifically prohibited CLECs from making splices in the central office manhole, while acknowledging U S WEST's right to do so. AT&T believed that this provision violated U S WEST's obligation to provide nondiscriminatory access. U S WEST has amended Section 10.8.2.9 to accommodate this concern.

Tenth, AT&T expressed concern that numerous requirements associated with the cost of replacement or modification of existing poles, ducts, conducts or innerduct that had been addressed by the FCC were not fully reflected in the SGAT. U S WEST revised Section 10.8.2.10 to conform the cost requirements to the relevant requirements in the FCC Orders.

Eleventh, in Section 10.8.2.15 and 10.8.2.16, U S WEST set up a curious dichotomy: CLECs were required to pay for all inspections during construction and afterwards, but U S WEST disclaimed any liability in respect to such construction and the related inspections. In effect, U S WEST asked to be paid without assuming any responsibility. U S WEST has agreed to delete the provision in Section 10.8.2.16 that disclaimed such liability.

Twelfth, AT&T voiced concerns about U S WEST's ability to terminate an order for poles, ducts, conduits and rights of way in Section 10.8.2.18. In short, AT&T was concerned that without a precise definition of "cause" in the SGAT, U S WEST would be

afforded too much discretion in terminating orders for poles, ducts, conduits and rights-of-way. U S WEST has proffered changes to this provision that address AT&T's issues.

Thirteenth, Section 10.8.2.19 of an earlier draft of the SGAT required CLECs to give up the use of poles, ducts, conduits and rights-of-way when U S WEST decides to abandon those or to buy the poles/innerduct from U S WEST. If U S WEST sells poles or innerduct to another party, the SGAT seemed to preclude the CLECs' right to any ongoing use. This preclusion could be very expensive for the CLECs and potentially disruptive to existing service. AT&T asserted that U S WEST should include provisions in any contract for sale of poles, innerduct or rights-of-way that protects existing and continuing CLEC use of the conveyed poles, conduits, ducts or rights-or-way. U S WEST should further protect CLECs' interests in poles, ducts, conduits and rights-of-way when U S WEST sells an exchange outright. Section 10.8.2.19 of the SGAT was amended to accommodate these concerns.

Fourteenth, U S WEST in Section 10.8.2.14 improperly allowed itself to recover the costs of any inspection conducted by U S WEST in which a violation, hazard or other breach of the SGAT is detected. There was no materiality standard qualifying this right of recovery, thereby creating an incentive for U S WEST to press minor or inconsequential issues to permit recovery. U S WEST has now agreed to recover its costs of inspection upon verification that a material violation or breach has occurred as outlined in Section 10.8.2.20.

Finally, AT&T and Cox raised concerns regarding U S WEST's provisioning of access to MDUs, expressing concerns regarding the use of exclusive arrangements with MDU and

campus business owners/operators that work to exclude CLECs from accessing rights of way of the MDUs and campus businesses. This exclusion prevents CLECs from providing competitive service to residential and business customers located within the complexes. In Arizona, the parties agreed to defer this issue to Checklist Item 2 (UNEs), and Checklist Item 4 (Loops and Subloops). AT&T agrees to defer this issue in Oregon to the workshops on Checklist Items 2 and 4. If not, AT&T requests an opportunity to supplement these comments to address these issues, or to discuss its concerns during the scheduled workshops.

Q. ARE THERE ANY REMAINING ISSUES WITH THE SGAT LANGUAGE U S WEST HAS PROPOSED ON THIS CHECKLIST ITEM?

A. Yes. First, U S WEST also inappropriately insists that the "rights, benefits and obligations" of the SGAT's section on Poles, Ducts, Conduits and Rights of Way be made reciprocal. *See* SGAT Section 10.8.1.1, 10.8.1.2 and 10.8.1.3. Section 251(b)(4) provides that all local exchange carriers have "the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224." Although at first blush, this section seems to be broadly applicable, Section 224 significantly narrows that application by excluding any incumbent LEC from the definition of "telecommunications carrier" for purposes of Section 224. Specifically, Section 224(f)(1) provides that "[a] utility shall provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." Section 224(a)(5), however, provides that "for the purposes of this section, the term 'telecommunications carrier' . . . does not include any incumbent local

exchange carrier as defined in Section 251(h)." U S WEST is an incumbent local exchange carrier as defined in Section 251(h). Therefore, CLECs have no obligation to provide reciprocal access to U S WEST.

Ignoring for a moment that such obligations should not be made reciprocal, AT&T believes that any reciprocal obligation should not be contained within the SGAT. Here, imposing a further requirement on any CLEC to reciprocally provides access to poles, ducts, conduits and rights-of-way as part of its generally available terms burdens the CLEC's access to U S WEST's poles ducts, conduits and rights of way. Such burden or condition is a fatal flaw in U S WEST's obligations to provide access under Checklist Item 3.

Second, in Section 10.8.2.8, U S WEST obligates all CLECs to obtain the necessary authority to occupy ROW and/or Poles/Innerduct. While perfectly appropriate, U S WEST fails to obligate itself to provide agreements that it may have that relate to such ROW or Poles/Innerduct upon the request of the CLEC, thereby unnecessarily hampering the CLEC from concluding its agreement with the owners of these rights. AT&T has experienced situations in its negotiations with municipalities and private owners that provision of such agreements would have greatly accelerated its negotiations and U S WEST has refused to provide them. U S WEST should be affirmatively obligated in the SGAT to provide upon the request of a CLEC any and all documents relevant to U S WEST rights and obligations concerning a ROW or Poles/Innerduct. In this respect, AT&T has proposed language for Section 10.8.4.1.3 of the SGAT as

follows:

> Inquiry Review – ROW – Prior to ordering access to ROW, U S WEST shall, upon request of CLEC, provide a copy of ROW agreements to CLEC within 10 business days of the request. U S WEST may redact such information in the agreement as provided that constitute such trade secret or proprietary information which if otherwise disclosed would both violate U S WEST obligations to the property owner for which the ROW runs and does not involve information that could indicate or be used as evidence of discriminatory treatment for CLEC.

Furthermore, U S WEST should clearly obligate itself not to prevent or delay any third party assignment of ROW to AT&T. Although U S WEST has proffered its own language for this Section in recent workshops in other jurisdictions, such language does not adequately address AT&T's concerns. In the Colorado workshops, the parties have been charged with drafting certain compromise language. To the extent that the parties work their results in acceptable compromise on this issue, AT&T expects the compromise to be made available in Oregon.

Third, in Section 10.8.2.20, U S WEST conditions a CLEC's access to poles, ducts, conduits and rights of way on the "requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act . . .," all of which are incorporated into the SGAT by reference. This paragraph is problematic in at least two ways. First, this paragraph purports to reconcile potential discrepancies among these standards by requiring that "[w]here a difference in specifications exists, the more stringent shall apply." This provision makes U S WEST's standards regarding access to poles, ducts, conduits and rights of way unreasonably restrictive. A more permissive and procompetitive approach

would be to require that the less stringent specification shall apply. Second, this paragraph makes reference to "U S WEST's procedures governing its standard maintenance practices," but the paragraph does not explain these "procedures," does not incorporate such "procedures" into the SGAT by reference (as it does with the others mentioned previously) and, does not make clear whether these "procedures" supplement or supercede the standards mentioned previously. U S WEST has not presented these procedures as evidence in this proceeding. Therefore, there is no way to evaluate the terms and conditions set forth in these procedures. In short, there is no way for this Commission to ascertain whether these procedures are consistent with the law and implementing FCC regulations and orders and are nondiscriminatory. Nor is there any way to determine if the terms and conditions set forth in the document are consistent with the provisions of the SGAT. For this reason alone, U S WEST cannot satisfy checklist item 3. Given U S WEST's reliance on extrinsic standards, which are at least verifiable and the product of known, industry standard development processes and U S WEST's explicit (if restrictive) process for dealing with conflict among them, U S WEST's reference to additional "procedures" is too vague. This section should be revised. Recently, U S WEST expressed a willingness to address AT&T's concerns in more detail, but as of the date of this testimony AT&T has not reviewed U S WEST's specific proposal and cannot consider its issues yet resolved.

Finally, during the workshop discussions and through AT&T's experience, there has been some controversy as to the comprehensiveness of the definitions of the poles, ducts and rights of way AT&T is entitled to be provided access to. Specifically, in a situation in Arizona, AT&T was denied access to a building riser that U S WEST owns. As a result

of this dispute, U S WEST disconnected customers of AT&T. To avoid potential conflict in this area and any use of such ambiguity to U S WEST's benefit, AT&T suggests that the U S WEST SGAT reflect the agreed upon language used in the majority of states throughout the U S WEST territory:

> "Poles, ducts, conduits and ROW" refer to all the physical facilities and legal rights which provide for access to pathways across public and private property. These include poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights-of-way, or any other requirements needed to create pathways. These pathways may run over, under, across or through streets, traverse private property, or enter multi-unit buildings. A Right-of-Way ("ROW") is the right to use the land or other property owned, leased, or controlled by any means by U S WEST to place poles, ducts, conduits and ROW or to provide passage to access such poles, ducts, conduits and ROW. A ROW may run under, on, or above public or private property (including air space above public or private property) and shall include the right to use discrete space in buildings, building complexes, or other locations.

Additionally, in this context, AT&T believe that a warranty from US WEST that it shall provide non-discriminatory access to poles, ducts, conduits and rights of way, as defined above, is important to clearly reflect U S WEST's obligations and to provide legal remedy under warranty should a violation occur. In light of the ever evolving nature and corporate structure of U S WEST business, the obligation not to discriminate should benchmark how U S WEST treats itself, affiliates and others.

Q. WHAT IS YOUR CONCLUSION REGARDING CHECKLIST ITEM 3?

A. Given that the revised language worked on by the parties in Arizona, Colorado and Washington has been incorporated in the Oregon SGAT and assuming the subloop/MDU issue is deferred in Oregon as it was in Arizona and Colorado, the only unresolved issues

on Checklist Item 3 relate to the additional concerns raised above. As currently drafted, these provisions are not consistent with the Act and must be rejected. The imposition of these inappropriate obligations must be eliminated before U S WEST can be found in compliance with Checklist Item 3.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of U S WEST Communications, Inc.'s Motion for an Alternative Procedure to Manage the Section 271 Process	Case No. USW-T-00-3

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. INU-00-2

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Investigation Into U S WEST Communications Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996	Docket No. D2000.5.70

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S SECTION 271 APPLICATION AND MOTION FOR ALTERNATIVE PROCEDURE TO MANAGE THE SECTION 271 PROCESS	**UTILITY CASE NO. 3269**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

U S WEST Communications, Inc. Section 271 Compliance Investigation	Case No. PU-314-97-193

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of U S WEST Communications, Inc. for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)	Docket No. 00-049-08

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION REGARDING 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, WYOMING'S PARTICIPATION IN A MULTI-STATE SECTION 271 PROCESS, AND APPROVAL OF ITS STATEMENT OF GENERALLY AVAILABLE TERMS	**DOCKET No. 70000-TA-00-599**

AFFIDAVIT OF DOMINICK SEKICH REGARDING ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

I. STATEMENT OF QUALIFICATIONS

My name is Dominick Sekich. I am a Senior Attorney with AT&T Corp. My business address is 1875 Lawrence Street, Denver, Colorado 80202. I am filing this testimony on behalf of AT&T Communications of the Mountain States, Inc. and AT&T Communications of the Midwest, Inc. (collectively "AT&T").

I received a BA from Colorado College in 1987 and a J.D. from Georgetown University in 1991. I have practiced law in private firms and with AT&T Corp. I have been employed by AT&T Corp. as a lawyer since 1996.

I have been involved in AT&T's State Law and Government Affairs Department since 1996, primarily serving as a commercial lawyer. I have negotiated numerous interconnection agreements and amendments to interconnection agreements with U S WEST. I have supported AT&T's efforts in arbitrating interconnection agreements. In addition, I have counseled my client on numerous issues related to interconnection, resale and purchase of unbundled elements.

II. PURPOSE OF AFFIDAVIT

The purpose of this Affidavit is to review the terms and conditions under which Qwest offers new entrants in the multi-state states checklist item 3, nondiscriminatory access to poles, ducts, conduits and rights-of-way, established under Section 271 of the Telecommunications Act

of 1996 (the "Act"). Mr. Ken Wilson will address the remaining checklist items that are at issue in this workshop for AT&T.

The competitive checklist and other requirements of Section 271 prescribe the mechanism by which a Regional Bell Operating Company ("RBOC"), such as Qwest, may provide in-region interLATA services. Congress properly determined that an RBOC's entry into the long distance market would be anti-competitive unless the RBOC's local market power is "first demonstrably eroded by eliminating barriers to local competition."[1] To demonstrate compliance with Section 271, therefore, Qwest must show that it has made real, significant, and irreversible steps to open its local market in multi-state states, both in statements of policy and in actual implementation of policy.[2] All of the "various methods of entry into the local telecommunications market contemplated by the Act -- construction of new facilities, purchase of unbundled network elements, and resale -- [must] be truly available,"[3] in the manner proscribed by the Act, the Federal Communications Commission ("FCC") regulations and orders and state commissions before Qwest can be found to have actually opened its local markets.

The FCC has concluded that to make a *prima facie* case that it is meeting the requirements of a particular checklist item, an RBOC must:

> demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. The Commission has previously concluded that, to establish that it is "providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist

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[1] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 18 (*"Ameritech Michigan Order"*).
[2] *Id.*
[3] *Id.*, ¶ 21.

item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[4]

Accordingly, Qwest must demonstrate that it has a concrete and specific legal obligation to provide each checklist item in a manner that is consistent with the requirements of Sections 271, 251 and 252 of the Act. To meet this burden, Qwest must demonstrate that its legal obligations have been met through its approved interconnection agreements ("ICAs") or Qwest may rely on its Statement of Generally Available Terms ("SGAT") for elements and services not otherwise dealt with in the ICAs.

Second, it must be determined whether Qwest is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.

III. SUMMARY OF ANALYSIS

Several issues under Checklist Item 3 are in dispute. First, Qwest seeks to require CLECs to reciprocally provide access to their poles, ducts, conduit and rights-of-way. Such a requirement is unlawful, as the Ninth Circuit recently confirmed. Second, CLECs have encountered significant problems in gaining access to multiple dwelling units ("MDUs"). During extensive negotiations on this issue, Qwest disclosed that it did not consider the access it obtains in MDUs to be rights-of-way that are subject to the obligations of Section 251(b)(4). The FCC has concluded that access to customers in multiple tenant environments is critical to the successful development of competition in the local telecommunications markets and has tentatively concluded that the access in question is either conduit or right-of-way that is subject

[4] *Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana*. CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 54 (*"BellSouth Second Louisiana Order"); Ameritech Michigan Order, ¶* 110.

to Section 251(b)(4).[5] Based in part upon its MDU position, Qwest has sought to impose conditions on the CLECs' access to rights-of-way and MDUs, including restrictions on access to the right-of-way and review of MDU agreements that would enable the Commission and the CLECs to determine Qwest's ownership and control of the right-of-way, etc. Qwest's position is contrary to law and will deter the development of competition and should be rejected.

Finally, Qwest seeks to create variances based upon the size of the request from the FCC-mandated requirement that all requests for access must be granted or denied within 45 days. The FCC has created no exception to this requirement. Therefore, Qwest's SGAT is not in compliance with this requirement.

IV. ANALYSIS

A. Definition of and Legal Obligation to Provide Access to Poles, Ducts, Conduits and Rights-of-Way.

Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of Section 224."[6]

In the *Local Competition Order*, the FCC interpreted section 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.[7] The FCC has reinforced the requirements set out in its *Local*

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[5] *In the Matter of the Promotion of Competitive Networks in Local Telecommunications Market*, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 96-98, WT Docket No. 99-217, FCC 99-141, ¶ 44 (July 7, 1999) ["Notice"].

[6] *BellSouth Second Louisiana Order*, ¶ 171.

[7] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 99-325 (rel. Aug. 8, 1996) *("Local Competition Order")*.

Competition Order in its recent *Order on Reconsideration*.[8] In addition, the FCC more recently interpreted the revised requirements of Section 224 governing rates, terms and conditions for telecommunications carriers' attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.[9]

Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[10] Notwithstanding this requirement, Section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[11]

Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments."[12] Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."[13] Notwithstanding this general grant of authority, Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are

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[8] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 99-266 (rel. Oct. 26, 1999) (*"Order on Reconsideration"*).
[9] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) (*"Pole Attachment Telecommunications Rate Order"*).
[10] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).
[11] 47 U.S.C. § 224(f)(2).
[12] Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).
[13] 47 U.S.C. § 224(b)(1).

regulated by a State." In addition, Section 224 expressly excludes incumbent LECs, such as Qwest from the class of persons entitled to such access.[14]

In its *Bell South Second Louisiana* decision, the FCC concluded that BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions by demonstrating that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to Section 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

The FCC specifically concluded that:

> consistent with the Commission's regulations implementing section 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames. Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[15] Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.[16] If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above.[17]

A lack of capacity on a particular facility does not entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC to take all reasonable steps to accommodate access in these situations. If a telecommunications carrier's request for access

[14] See 47 U.S.C. § 224(a)(5) and 224(f)(1) and *Local Competition Order*, ¶ 1231.
[15] *Local Competition Order*, ¶ 1123.
[16] 47 C.F.R. § 1.1403(b).

cannot be accommodated due to a lack of available space, a BOC must modify the facility to increase capacity under the principle of nondiscrimination.[18]

B. Summary of Qwest's Purported Evidence of Compliance.

Qwest claims that it is providing, in practice and through its SGAT, nondiscriminatory acesss to poles, ducts, conduits and rights-of-way. Qwest cites to access it is currently providing to CLECs in the six states as evidence of its compliance. Qwest also contends that the legal obligations set forth in Section 10.8 of the proposed SGAT set forth the necessary concrete and specific legal obligations to satisfy the Act and FCC Rules.

C. Analysis of Qwest's SGAT.

The Checklist Items that are at issue in this workshop have been previously addressed in Section 271 workshops in Arizona, Colorado, Washington and Oregon. Numerous issues have been raised previously by AT&T in these workshops relating to access to poles, ducts, conduits, and rights-of-way. Some of those issues have been resolved by the parties through revisions made by Qwest to its SGAT and via representations made by Qwest in the course of the workshops. The discussion below explains the issues raised by AT&T and the extent to which and the manner that those issues have been resolved. In addition, there remain several disputed issues that have not been resolved to date. I address those issues as well below.

1. Issues Addressed in Other Section 271 Workshops and Their Resolution, If Any.

In the other state workshops, AT&T raised concerns that the SGAT did not provide assurances to CLECs that Qwest will provide access to poles, ducts, conduit and rights-of-way

[17] *BellSouth Second Louisiana Order*, ¶ 176.

"owned or controlled by" Qwest, as is required by the Act. Without such assurances, Qwest would not be legally bound to provide access to the full panoply of poles, ducts, conduits and rights-of-way required by the Act. Qwest has addressed this concern with revisions to Sections 10.8.1.1 and 10.8.1.2.

However, AT&T has requested that Qwest further clarify this obligation by including language that demonstrates that in the event Qwest exercises its control either directly or indirectly, AT&T will be afforded the requisite access and/or rights and the means to determine those rights. In AT&T's experience in acquiring rights with building owners, Qwest may exercise a degree of indirect control over the building owner, so that for all intents and purposes, Qwest is in ultimate control of access to such poles, ducts, conduits and rights-of-way. The language requested by AT&T clarifies that in these circumstances Qwest may not avoid its responsibilities by arguing that Qwest lacks any direct control. The SGAT provides that Qwest must provide access to ROW, conduit, etc. that Qwest owns or controls. However, the SGAT provides no means to determine when Qwest owns or controls such access. Issues have arisen that demonstrate the need for CLECs to have access to the agreements that Qwest has with private landowners and building owners in order to determine the scope of Qwest's ownership and control. For example, a CLEC may be given access to ROWs or conduit by a building owner based upon the representation of the building owner that he/she controls such access. Qwest disconnects the CLEC's facilities and disrupts customer service, claiming that Qwest controls the conduit and the CLEC has no authorization to place facilities in the conduit. Absent access to the agreement, the CLEC has no means to protect its facilities and customer service. It has no way to determine who owns or controls the conduit. A solution would be to allow for CLEC access to the agreements before the CLEC facilities are installed so that a proper

[18] *Local Competition Order*, ¶ 1224.

determination of ownership and control can be established. This proposed requirement is discussed in greater detail below in my discussion of remaining issues with the SGAT language.

Second, in Section 10.8.1.2, AT&T raised concerns regarding the issue of ownership of innerduct that is placed by a CLEC in an empty Qwest duct. Qwest has modified Section 10.8.1.2 of the SGAT to accommodate this concern. However, as described below, AT&T has other concerns about Qwest's SGAT Section 10.8.1.2.

Third, Qwest did not specifically grant access rights to rooftop space on Qwest buildings. In the Arizona workshops, Qwest stated that Section 10.8.1.3 includes such access to the extent the space is owned or controlled by Qwest. With this confirmation, AT&T considers this issue resolved, subject to the control determination addressed above.

Fourth, Section 10.8.2.4 previously obligated Qwest to provide relevant plats, maps, engineering reports and other data within any time frame if such requests involve the gathering of plats from multiple locations. At a minimum, Qwest should be obligated to provide such information within a reasonable time period, not to exceed 60 days. In recent workshops in other jurisdictions Qwest has proposed changes to Section 10.8.2.4 to correct this issue.

Fifth, Section 10.8.2.5 ambiguously limited Qwest's obligations to construct, install, modify or place Poles/Innerduct as required by the Pole Attachment Act of 1934 or as otherwise "expressly" provided in the SGAT. Qwest has agreed in other state workshops to incorporate all other relevant state and municipal laws in this regard, and AT&T expects Qwest to do the same in the multi-state collaborative states.

Sixth, the SGAT failed to acknowledge that Qwest may only deny a request for access for reasons of safety, reliability and generally applicable engineering purposes, provided these

principles are applied in a nondiscriminatory manner.[19] If a CLEC request for access cannot be accommodated due to a lack of available capacity, Qwest must modify the facility to increase its capacity under the principle of nondiscrimination and must explore accommodation in good faith with the party seeking access.[20] Qwest revised Section 10.8.2.6 to address this concern.

Seventh, Qwest may not reserve space for the provision of telecommunications or video service to the detriment of a new entrant, although the utility may reserve space for its core utility service.[21] The SGAT was completely silent on when and how Qwest will reserve space for itself. Qwest revised Section 10.8.2.6 to address this issue.

Eighth, Qwest did not make any affirmative statement as to what poles, ducts, conduits and rights-of-way will be made available or where those will be made available. AT&T asserted that it must be clear that Qwest is obligated to provide access to all poles, ducts, conduits and rights-of-way, whether on public property, private property or owned property, that is owned or controlled by Qwest. Similarly, Qwest makes no affirmative statement about access to Multiple Dwelling Unit ("MDU") and other multiple tenant environments. The FCC has tentatively concluded that the obligations under Section 224 encompass in-building conduit, such as riser conduit, that may be owned or controlled by Qwest.[22] Availability of space on rooftops of Qwest buildings and public and private buildings where Qwest has access was also not mentioned. Qwest has proffered a revision of Section 10.8.1.3 to generically address this issue. However, as will be addressed below, Qwest's proposal has only addressed part of this issue, and AT&T and other CLECs have additional concerns.

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[19] 47 U.S.C §224(f)(2); *Local Competition Order*, ¶ 1222.
[20] 47 U.S.C §224(f)(2); *Order on Reconsideration*, ¶ 8.
[21] *Local Competition Order*, ¶ 1120.
[22] *Promotion of Competitive Networks in Local Telecommunications Market*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-217, FCC 99-141, ¶ 44 (rel. July 7, 1999).

Ninth, the SGAT specifically prohibited CLECs from making splices in the central office manhole, while acknowledging Qwest's right to do so. AT&T believed that this provision violated Qwest's obligation to provide nondiscriminatory access. Qwest has amended Section 10.8.2.9 to accommodate this concern.

Tenth, AT&T expressed concern that numerous requirements associated with the cost of replacement or modification of existing poles, ducts, conducts or innerduct that had been addressed by the FCC were not fully reflected in the SGAT. Qwest revised Section 10.8.2.10 to conform the cost requirements to the relevant requirements in the FCC Orders.

Eleventh, in Section 10.8.2.15 and 10.8.2.16, Qwest set up a curious dichotomy: CLECs were required to pay for all inspections during construction and afterwards, but Qwest disclaimed any liability with respect to such construction and the related inspections. In effect, Qwest asked to be paid without assuming any responsibility. Qwest has agreed to delete the provision in Section 10.8.2.16 that disclaimed such liability.

Twelfth, AT&T voiced concerns about Qwest's ability to terminate an order for poles, ducts, conduits and rights-of-way in Section 10.8.2.18. In short, AT&T was concerned that without a precise definition of "cause" in the SGAT, Qwest would be afforded too much discretion in terminating orders for poles, ducts, conduits and rights-of-way. Qwest has proffered changes to this provision that address AT&T's issues.

Thirteenth, Section 10.8.2.19 of an earlier draft of the SGAT required CLECs to give up the use of poles, ducts, conduits and rights-of-way when Qwest decides to abandon those or to buy the poles/innerduct from Qwest. If Qwest sells poles or innerduct to another party, the SGAT seemed to preclude the CLECs' right to any ongoing use. This preclusion could be very expensive for the CLECs and potentially disruptive to existing service. AT&T asserted that

Qwest should include provisions in any contract for sale of poles, innerduct or rights-of-way that protect existing and continuing CLEC use of the conveyed poles, conduits, ducts or rights-of-way. Qwest should further protect CLECs' interests in poles, ducts, conduits and rights-of-way when Qwest sells an exchange outright. Section 10.8.2.19 of the SGAT was amended to accommodate these concerns.

Fourteenth, Qwest in Section 10.8.2.14 improperly allowed itself to recover the costs of any inspection conducted by Qwest in which a violation, hazard or other breach of the SGAT is detected. There was no materiality standard qualifying this right of recovery, thereby creating an incentive for Qwest to press minor or inconsequential issues to permit recovery. Qwest has now agreed to recover its costs of inspection upon verification that a material violation or breach has occurred as outlined in Section 10.8.2.20.

Finally, AT&T raised concerns regarding Qwest's provisioning of access to MDUs, expressing concerns regarding the use of exclusive arrangements with MDU and campus business owners/operators that work to exclude CLECs from accessing rights-of-way of the MDUs and campus businesses. This exclusion prevents CLECs from providing competitive service to residential and business customers located within the complexes. This issue will be addressed further below.

2. Issues That Are In Dispute.

a. Reciprocal Access.

In the SGAT, Qwest attempts to impose upon CLECs a reciprocal obligation to provide access to poles, ducts, conduits and rights-of-way ("ROW"). Specifically, Section 10.8.1.4 specifies that: "[p]ursuant to 47 U.S.C. Section 251(b)(4), each party shall have the duty to afford access to its poles, ducts, conduits and rights-of-way of telecommunications services to

the other party . . ." The Act and the FCC's implementing rules and orders obligate Qwest to provide access to poles, ducts, conduits and rights-of-way. They do not obligate the CLECs to do the same. At the time of the first workshop, this issue was under consideration at the Ninth Circuit. AT&T and WorldCom did not contest this provision because the state of the law in Colorado required reciprocal access. That is no longer the case and Section 10.8.1.4 should be revised accordingly.

Section 251(b)(4) of the Act imposes on each LEC "the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title." Section 224(a)(5) of the Act states for purposes of § 224, "the term 'telecommunications carrier' (as defined in § 153 of this title) does not include any incumbent local exchange carrier as defined in § 251(h) of this title." (Emphasis added). Although AT&T and Qwest are both telecommunications carriers as defined in 47 U.S.C. § 153 under Section 224(a)(5), CLECs are telecommunications carriers, but Qwest is not.

This is precisely the position articulated by the FCC in its Rules and in paragraph 1231 of the *Local Competition Order*.[23] Specifically, Section 51.219 of the Rules provides that "[t]he rules governing access to rights-of-way are set forth in part 1, subpart J of this chapter." Under the part 1, subpart J of the FCC's Rules only a "telecommunications carrier" is entitled to reciprocal access (*Id.* § 1.1403(a)), and "the term telecommunications carrier . . . does not include . . . incumbent local exchange carriers." *Id.* § 1.1402(h). Similarly, in paragraph 1231 of the *Local Competition Order*, the FCC states:

> In addition, incumbent LECs cannot use section 251(b)(4) as a means of gaining access to the facilities or property of a LEC. A LEC's obligation under section 251(b)(4) is to afford access "on rates, terms, and conditions

[23] *See* 47 C.F.R. §§ 1.1403(a), 1.1402(h), § 51.219 and *Local Competition Order*, ¶ 1231.

> that are consistent with section 224." Section 224 does not prescribe rates, terms, or conditions governing access by an incumbent LEC to the facilities or rights-of-way of a competing LEC. Indeed, section 224 does not provide access rights to incumbent LECs. We cannot infer that section 251(b)(4) restores to an incumbent LEC access rights expressly withheld by section 224. We give deference to the specific denial of access under section 224 over the more general access provisions of section 251(b)(4). Accordingly, no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4).

Mr. Freeberg contends in his testimony that there is a split in the lower courts on this issue, citing to ruling of federal district courts in Oregon and Arizona.[24] This split in authority no longer exists. In a recent decision, the Ninth Circuit reversed the Oregon and Arizona federal court decisions, concluding that, under the Hobbs Act, it was bound by the interpretation of the FCC found in paragraph 1231 of the Local Competition Order.[25] Under the Hobbs Act, 28 U.S.C. ¶ 2342, exclusive jurisdiction to review orders of the FCC is vested in the Courts of Appeals. Such review of the Local Competition Order was conducted by the Eighth Circuit. No RBOC appealed the determination made by the FCC in Paragraph 1231 regarding reciprocal access to rights-of-way. Accordingly, the interpretation in paragraph 1231 of the Local Competition Order is legally binding. Qwest's SGAT is inconsistent with the conclusion of the FCC that the obligations of Section 251(b)(4) of the Act are not reciprocal.

Thus, Qwest is dead wrong in asserting that it is lawful to impose reciprocal access provisions on the CLECs. Under the plain terms of the Act, the FCC's Rules and Order, Qwest does not have the right to require CLECs to afford to Qwest reciprocal access to their poles, ducts, and rights-of-way.

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[24] Direct Testimony of Thomas R. Freeberg, p. 15 ("Freeberg Direct Testimony").
[25] *U S WEST Communications v. Hamilton*, 2000 WL 1335548 (9th Cir. Sept. 13, 2000).

Accordingly, Section 10.8.1.4 of the SGAT must be revised to remove all requirements for reciprocal access.

b. Qwest's refusal to afford CLECs access to Its ROW in MDUs and to its MDU Agreements.

Qwest contends that the access it obtains in MDU property is not a right-of-way, subject to the requirements of Section 251(b)(4).[26] While Qwest claims it will give CLECs access to whatever rights Qwest has in MDUs, the scope of this promise is unclear and could be employed by Qwest to ultimately limit the access to which the CLECs are legally entitled. In addition, Qwest is preventing access to or placing limitations on the CLECs access to the very agreements from which Qwest's interests could be ascertained. Qwest's position is unlawful and this should be resolved by the Commission at the appropriate time.

Qwest's position is flawed. Section 271(c)(2)(B)(iii) of the Act requires that RBOCs provide:

> Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates and in accordance with the requirements of section 224.

47 U.S.C. § 271(c)(2)(B)(iii)(emphasis added). Section 224(f)(1) of the Act states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[27] In Order No. 91-141, the FCC concluded that the riser conduit used by a utility in MDUs may be

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[26] Mr. Freeberg contends that AT&T agreed in the Arizona workshops that the MDU issue was not a Checklist Item 3 issue. (Freeberg Direct Testimony, p. 17.) That is not the case. AT&T raised this issue in Arizona in the workshop on Checklist Item 3 and, at the request of Qwest, AT&T agreed to defer consideration of the issue to the subloop workshop. AT&T did not agree that this issue was not Checklist Item 3 affecting. Moreover, since that time, Qwest has articulated its position that the access it obtains in MCUs is not right-of-way that is subject to the requirements of Section 251(b)(4). AT&T believes this is an issue that must be confronted in Checklist Item 3.

[27] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

either conduit or rights-of-way under Section 251(b)(4).[28] While this conclusion was tentative and subject of further inquiry, it is a binding determination of the FCC until reversed. In the same order, the FCC sought further comments on the circumstances that would be indicia of "control" of a right-of-way within the meaning of Section 224 and Section 251(b)(4) of the Act. The FCC has indicated that it intends to issue its order on these issues as early as this week.[29]

Obviously both the issue of Qwest control of MDU access and the legitimacy of its imposition of conditions on the CLECs' access to ROW that is discussed below could be definitively resolved by this FCC order. Accordingly, Checklist Item 3 should not be resolved until the impact of this forthcoming order on Qwest's compliance with this Checklist Item can be fully addressed.

Furthermore, the Federal Communications Commission ("FCC") has clearly stated that RBOCs have an obligation to make all "relevant data" related to ROW inquiries available for inspection and copying, subject to reasonable conditions to protect proprietary information.[30] Qwest has sought to prevent access to or place limitations on the CLECs' access to Qwest's ROW and MDU agreements. Qwest's proposals are unlawful and unnecessary and should be rejected.

Generally, ROW agreements describe the scope of use and specify important restrictions on use. At a minimum they reflect the property owner's expectations and, to the extent that an RBOC receives certain treatment under them, they reflect the actual "nondiscriminatory" use contemplated by the Act. In addition, they may reflect the fees and charges the owners deem appropriate. The fact that some agreements may contain "confidentiality" clauses making the

[28] *Notice*, ¶ 44.
[29] *See* Attachment A.

terms and conditions of the agreements "secret," does not thereby render truly "proprietary information" at risk by disclosing the agreements.

ROW agreements and easements necessarily vest a limited property interest in the utility holding such right for the purpose of allowing the utility to efficiently and effectively establish the necessary infrastructure. When Qwest was the sole local telecommunications provider in its territory, it had, and continues to have, the right of eminent domain to obtain the ROW necessary to serve its customers. However, Qwest also has the ability to enter into ROW contracts and easements with building owners and property owners throughout Colorado instead of exercising its power of eminent domain. As a result of this framework, Qwest has been able to effectively and efficiently obtain ROW agreements throughout its territory. Historically as a monopoly, Qwest enjoyed significant advantages in acquiring these rights through its ability to leverage the threat of an eminent domain proceeding to acquire advantageous ROW terms quickly and efficiently.

These contracts and easements may take many forms. They may consist of documents formally recorded in the real property records of a given county or they may be less formal, unrecorded documents. Such unrecorded documents may not be described solely as "easements" or rights-of-way, but may include such rights-of-way or access under terms that provide Qwest access to real property, such as Qwest's "Agreement for New Multi-Tenant Residential Properties," (Attachment B). Joint Intervenors, Qwest and the Commission should appropriately consider all these contracts and agreements as "ROW agreements."

Rather than disclosing these ROW agreements to CLECs, Qwest appears to want to keep them secret and, rather, pretend that it lacks control over the disclosure of their terms or

[30] *Local Competition Order*, ¶ 1223. The FCC made this determination in the context of considering a denial of access to rights-of-way, and it concluded that efficiently resolving such disputes demanded that all necessary

existence. Thus, while Qwest enjoys full knowledge of the terms and conditions upon which the property owner has allowed access to the ROW, it refuses to place its competitors in an equal position. Nevertheless, Qwest maintains that its competitors must be bound by the same terms and conditions.[31] Strangely enough, Qwest dubs this "nondiscriminatory access."[32]

Simply put, nondisclosure of vital information about existing ROW contracts is discriminatory and a violation of the Act, §§ 224(f)(1) and 271(c)(2)(B)(iii). Therefore, the SGAT should contain language clarifying that Qwest will make these contracts available upon request (and, if necessary, under an agreement to maintain any confidentiality requirements).

Qwest has recently made certain proposals regarding access to documents that comprise a ROW. Although somewhat encouraging, as discussed later, Qwest's proposals fall short of what must be required of them to provide non-discriminatory access to ROWs.[33]

By refusing to reveal all ROW agreements, Qwest creates two distinct problems: (1) it cloaks its "non-discriminatory" treatment in secrecy, the validity of which can only be tested through discovery of the agreement in litigation; and (2) it places property owners and CLECs in the untenable position of having to face numerous ROW negotiations or numerous eminent domain proceedings from various utilities should Qwest deny access or refuse to expand its existing access. As discussed further, Qwest's very recent proposal in Colorado fails to adequately address these problems.

Requiring Qwest to reveal these contracts and easements wherever proper will deter Qwest from entering into or enforcing exclusive and anti-competitive service agreements with

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information be made available up front.

[31] Freeberg Direct Testimony, p. 4.

[32] *Id.* at 8.

[33] Qwest has also recently proposed in Colorado a mechanism for "quitclaiming" access to rights-of-way. This brief will address such mechanism insofar as it relates to the discrete issue of disclosure of ROW agreements, although Qwest's newly proposed mechanism for access to the ROWs itself is also problematic.

building and property owners and puts the CLEC on equal footing, enabling them to understand the scope of access that has been afforded to Qwest.

c. Qwest's Proposal To Require the Prior Agreement of Landowners is Unnecessary, Contrary to Sound Policy, Burdensome and Discriminatory.

Qwest has revised its SGAT to include extensive new requirements for a CLEC to obtain the agreement of a property owner to provide notice and an opportunity to cure supposed "defaults" of a CLEC transfer of any rights of access to a ROW.[34] Qwest argues that these landowner agreements are essential to protect it from a panoply of as yet unrealized risks. These new requirements are generally unnecessary and create extraordinarily time- and resource-intensive burdens on landowners as well as CLECs who attempt to gain nondiscriminatory access to rights-of-way as provided under the Act.

Qwest's extensive new landowner agreement requirements are not required by the law, are burdensome, and are inconsistent with sound public policy. Further, because such consent requirements are apparently not required of Qwest itself, or its affiliates, Qwest's consent proposals are discriminatory in violation of both state and federal law. Qwest's proposals require CLECs to obtain the agreement of an owner whose property is subject to an easement, license, "Agreement for New Multi-tenant Residential Properties" or similar ROW agreement to provide notice and opportunity to cure any possible default by a CLEC before permitting a CLEC to have access to the ROW. See SGAT Exhibit D, ¶ 2.2, and Exhibit D, Attachment 4. Qwest's proposal requires the CLEC to obtain such landowner agreement at an early stage in the access process. SGAT Exhibit D ¶ 2.2.

[34] Qwest's proposal for CLECs to obtain the agreement of a landowner to provide notice and an opportunity to cure succeeded a previous Qwest proposal for the CLEC to obtain "consent" of the landowner to any transfer. Still, the new landowner agreement is still styled a "consent" by Qwest. *See* SGAT Exhibit D, Attachment 4. As argued below, the proposals impose substantially the same burdens.

The Act mandates that Qwest provide access to that which it owns or controls. Neither the Act nor the FCC's rules and orders impose any requirement for a CLEC to obtain the agreement of a landowner to provide notice and an opportunity to cure to Qwest or further agreement of a landowner, as a pre-condition for access to Qwest's rights-of-way.[35] The FCC has stated that Qwest must establish nondiscriminatory processes to expedite access to ROWs: "Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."[36]

Neither Qwest's form ROW agreements nor the sample executed ROW agreements supplied by Qwest contain any such landowner agreement requirement. (*See* Attachment B.) Rather, some of the very ROW agreements supplied by Qwest contain provisions that suggest that Qwest entered into agreements with landowners deliberately excluding such clauses and intending that such agreements would be assignable without restriction. First, the Qwest form agreement contains a restriction on assignment that prohibits the landowner, not Qwest, from assigning the contract.[37] This provision is included for the benefit of Qwest; the agreement does not include a corresponding promise for the benefit of the landowner. Other ROW documents provide for additional requirements of assignment. For example, Qwest's Form Agreement for New Multi Tenant Properties contains a provision that requires the landowner, not Qwest, to notify Qwest of a transfer of the subject property.[38] These agreements clearly contemplate that Qwest may assign ROW access without restraint. Qwest, a sophisticated company, could have

[35] 47 U.S.C. § 251(b)(4); *Local Competition Order*, ¶¶ 1119 – 1158.
[36] *Bell South Second Louisiana Order*, ¶ 176 (citing Local Competition First Report and Order, 11 FCC Rcd at 16067).
[37] *See* Qwest's Form Agreement for New Multi Tenant Properties, ¶ 17.2.

insisted as part of this assignment that a landowner agree to provide notice and opportunity to cure a default by an assignee, but it did not.

Qwest has asserted that obtaining an agreement from a landowner to provide notice and an opportunity to cure is required to adequately protect its interests. Qwest's assertion is entirely unfounded. The SGAT presently contains numerous indemnification and liability provisions intended to protect it in the event a CLEC acts or fails to act in a way that exposes Qwest to liability.[39] Qwest's claim that it cannot be assured of the financial ability of any particular CLEC and therefore cannot rely on these section to adequately protect it rings hollow. Such an argument undercuts the provision of any services under the SGAT. Further, Qwest ignores that CLECs generally have to demonstrate some form of financial ability before providing telecommunications services.

No state law requires a separate agreement of a landowner before Qwest can permit access by a CLEC to Qwest's ROWs in the absence of an express provision requiring such landowner agreement. Indeed, applicable FCC rules suggest that Qwest cannot impede a CLEC's access to ROWs.[40] Thus, the addition of Qwest's requirement to obtain an additional agreement of a landowner to provide notice and opportunity to cure a purported default by a CLEC, which is not only unnecessary but, as described below, also burdensome, cannot be interpreted as anything more than an impediment to a CLEC's access to ROWs. Instead of moving closer to closure of this issue, Qwest's recent proposals makes Qwest's satisfaction of Checklist Item 3 even more dubious.

Where Qwest demonstrates that certain ROW agreements expressly provide for obtaining the agreement of landowner to provide notice and an opportunity to cure before permitting

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[38] *See Id.* ¶ 13.
[39] *See, e.g.,* SGAT §§ 5.1, 5.9, and 5.13.

"assignment" or other transfer, AT&T does not object to the inclusion in the SGAT certain limited and reasonable provisions designed to obtain and expedite such landowner agreement under these circumstances, although even in these circumstances the Act does not require consent. However, such provisions must not be burdensome and must ensure that Qwest does not abuse its incumbent status to impose such landowner agreement requirements on landowners. This is especially important on going-forward basis, and Qwest should not now be permitted to avoid the objectives of the Act by entering into agreements that, specifically impose requirements on property owners to obtain their agreement to a notice and opportunity to cure.

Regardless of whether Qwest's landowner agreement provisions are necessary or required by law, Qwest's proposal sets forth detailed obligations that it seeks to impose only on CLECs. These requirements are unduly burdensome and amount to an impediment to a CLEC's access to ROWs. Qwest has crafted a troublesome form of "Notice and Opportunity to Cure" document that is unlikely to be welcomed by any landowner. The likely result will be a protracted, tripartite negotiation between CLEC, landowner and Qwest. Accordingly, the provisions set forth in Qwest's proposed "Notice and Opportunity to Cure" document and Qwest's refusal to provide access to ROWs under any circumstances without such document, make it unlikely that a CLEC will be able to expeditiously obtain access to such ROWs.

In addition to being unnecessary and burdensome, Qwest's consent proposal is discriminatory because Qwest requires a CLEC to comply with arrangements that are more burdensome to CLECs than to itself. Specifically, under Qwest's proposal, CLEC's incur liabilities that are greater than those incurred by Qwest. Further, in Respondent's reasonable belief, Qwest does not obtain an agreement to provide notice and opportunity to cure in every instance in which transfer of an interest from Qwest is made.

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[40] *See Bell South Second Louisiana Order*, ¶ 176.

Finally, Qwest's advocacy of obtaining landowner's agreement to provide notice and an opportunity to cure ignores the primary fallacy of Qwest's position. Although Qwest argues that the perceived threat of CLECs "defaulting" under ROW agreement will expose Qwest to potentially disastrous outcome, Qwest ignores that CLECs are similarly at risk. In short, Qwest is just as likely as any CLEC through its action or inaction to cause a default under the ROW agreement. Qwest's proposal does not afford a CLEC any protection however. Qwest deems it unnecessary to require the agreement of landowner to provide notice and opportunity to cure to the CLEC, nor does Qwest deem it necessary to expressly agree that CLEC can perform under the ROW agreement in the event of Qwest's default. Such a proposal is discriminatory on its face.

d. Qwest Requirement that CLECs Record Qwest's MDU Agreements is Nonsensical.

Mr. Freeberg appears to contend that AT&T should have to record Qwest's MDU agreements if AT&T believes that such agreements contain real property interests.[41] Again, Qwest seeks to impose conditions on access to its ROW that are contrary to law and which is designed to impose unnecessary burdens on the CLECs access to ROW that Qwest is legally obligated to provide.

In any case, it is difficult to understand legally how AT&T would record an agreement between Qwest and another party or why AT&T should have to record Qwest's agreements in order to obtain access to ROW or to the ROW agreements.

e. Checklist Item 3 Should Not Be Closed Until ROW Issues From Other Checklist Items Are Resolved.

[41] Freeberg Direct Testimony, p. 19. Mr. Freeberg then states that AT&T stated that its objections, which pertain solely to MDUs, would vanish if Qwest provides sufficient access to subloops. This statement is provided without quotation and is not accurate.

Several other checklist items raise ROW concerns that must be fully addressed before Checklist Item 3 is closed. As an example, in Arizona, Qwest asserted, and other parties agreed, that the MDU access issue be addressed in the workshop on subloops. While some discussions on MDUs have occurred in other workshops, the MDU and subloop issues are integrally related. CLECs should not be foreclosed from addressing MDU access issues in the subloop workshop.

Similarly, in the recent Arizona Emerging Services workshop, Qwest stated that it intended to offer a new product called "field collocation." While Qwest presented no SGAT language or testimony describing this new offer, it appears that field collocation will raise ROW issues. As a result, ROW compliance issues will likely arise in Workshop 2 when this filed collocation offering is presented.

Accordingly, because other checklist items raise right-of-way concerns, Checklist Item 3 should not be finally closed until such concerns are fully addressed in the related workshops and parties should not be prevented from raising Checklist Item 3 issues in other workshops.

f. Qwest Is Required to Grant or Deny All Request For Access to Poles, Ducts, Conduit and Rights-of-Way Within 45 Days.

In Section 10.8.4 of the SGAT, in general, and Exhibit D thereto, which is specifically referenced in that section, Qwest has established a "standard inquiry" procedure outlining its obligations to respond to requests for access to poles, ducts and rights-of-way ("ROW"). The process is described in particularity in a table found in Section 2.2 of Exhibit D. In this table, Qwest describes the timeframes within which it will respond to a verification request for access to poles, ducts or ROW. The response times vary based upon the size of the access request.

Under the Act and relevant orders of the FCC, there is no basis for distinguishing a "standard inquiry" from a larger verification request. Qwest is required to respond to all requests

for access to poles, ducts or ROW within 45 days. *See, In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*; 15 FCC Rcd. 9563, June 7, 2000.

Section 47 CFR 1.1403(b) provides in pertinent part:

> Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

The FCC rule contains no exception based on the size of the order. Size doesn't matter. Therefore, Sections 10.8.4 must be modified by eliminating the standard inquiry limitation and by ensuring that Qwest responds to all requests for access within 45 days, irrespective of the size of the request.

In *Cavalier*, the FCC was asked to address the numerous delays Complainant had suffered in obtaining the utility's approval to attach to its poles. In answer to the electric utility's claim that Rule 1.1403 only required it to respond 45 days if it were going to deny the application, the FCC concluded that under its rules the responding utility must grant or deny all requests for access to poles within 45 days. The FCC then directed the electric utility to provide immediate access to all poles for which permit applications had been pending for greater than 45 days.

The FCC's interpretation of its rules *Cavalier* is controlling here. Qwest's SGAT must be modified to require responses to all requests for access to poles, ducts and ROW within 45 days consistent with FCC Rule 1.1403.

V. CONCLUSION

To the extent that the revised language worked on by the parties in Arizona, Colorado and Washington has been incorporated in the various multi-state SGATs, the only unresolved issues on Checklist Item 3 relate to the additional concerns raised above. As currently drafted, these provisions are not consistent with the Act and must be rejected. Qwest's attempt to impose conditions on the CLECs' access to rights-of-way and MDUs, including restrictions on access to the right-of-way and review of MDU agreements that would enable the Commission and the CLECs to determine Qwest's ownership and control of the right-of-way, is inappropriate and contrary to law and must be eliminated before Qwest can be found in compliance with Checklist Item 3.

Decook,Rebecca B - LGA

From: Tom Dixon [Thomas.F.Dixon@wcom.com]
Sent: Wednesday, July 05, 2000 10:55 AM
To: aab@aterwynne.com; simonf@atg.wa.gov; harlow@millnash.com; eric.s.heath@mail.sprint.com; Ann.Hopfenbeck@wcom.com; aisar@harbor-group.com; gregkopta@dwt.com; kthomas@atgi.net; mbtribby@att.com; Jragge@uswest.com; decook@att.com; thomas.f.dixon@wcom.com; ddahlers@echelon.com; dhsiao@rythms.net; sacik@perkinscoie.com; pbewick@newedgenetworks.com; lfr@aterwynne.com; ksanderson@nextlink.com; nbates@eli.net; fcoleman@mpowercom.com; cdeanhar@Covad.com; rlipman@mcleodusa.com; nancyj@springnw.com; cmailloux@northpointcom.com; marktrinchero@dwt.com; tom_flavin@icgcomm.com; 'Cc:'; bwallis@wutc.wa.gov; ddittemo@wutc.wa.gov; dgriffit@wutc.wa.gov; blackmon@wutc.wa.gov; pstrain@wutc.wa.gov; ssmith@wutc.wa.gov; tosinski@wutc.wa.gov; jroth@wutc.wa.gov; RMattoon@wutc.wa.gov; twilson@wutc.wa.gov
Cc: thomas.f.dixon@wcom.com
Subject: Language at Issue

All of this langauge has been discussed in the last Colorado Workshop, with the exception of the langauge on Checklist item 7. We reached agreement on some of the Checklist Item 3 language and some of the Checklist Item 13 language in Colorado and I assume parties will take the same positions in Washington. The Checklist item 13 language should be identical to that sent out immediately after the last workshop. The Checklist Item 3language is in response to concerns WCom expressed at the last workshop.

I intend to send this to another list for the WA 271 proceeding that may be similar, if not identical, to this list. I am not sure which list is current. Please accept my apologies if you get this twice.

Checklist Item 3, Access to Poles, Ducts, and ROW

Section 10.8.4.1.1, 10.8.4.1.2, Exhibit D

As requested, WCom has reviewed the language in Section 10.8.4.1.1, 10.8.4.1.2, and disagrees with the arbitrary limits of 100 poles, 30 utility holes or 2 miles that USW is attempting to put on the pole attachment process. At first when talking with the USW lawyer he argued that there simply were physical constraints regarding a large order such as 500 poles, and that seemed reasonable. However, upon considering this issue further, I do not know of an exception in the Act to the 45 day requirement for access or denial of same, for "large orders". And in fact, the 45 day time is affirmed in 47 CFR 1.1403, without an exception. I think that we should insist on the 45 days regardless of how large the order is unless they can show us an exception in the Act or rules. If it is a large order, they must simply staff up.

Section 2.2 of Exhibit D also contains the "standard inquiry of 100 poles or fewer" limitation. Note that the language in all caps stating that the utility must either grant access or confirm denial in writing within 45 days following the date of inquiry in Section 2.2 is predicated on the "standard inquiry", which is unacceptable. I also think that we should add a sentence from 47 CFR 1.1403 after the 45 day sentence as follows: "The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards."

Section 10.8.4.3.

WCom has no problem with 10.8.4.3.

Section 10.8.4.4.

10.8.4.4 - Revise fifth sentence as follows: "CLEC must request such records, if at all, within sixty (60) calendar days following its receipt of invoice."

Revise the seventh sentence as follows: "Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days following receipt of invoice."

Add to end of eighth sentence the all caps language: "... whichever comes last, BUT IN NO EVENT LATER THAN 90 DAYS FOLLOWING THE REQUEST FOR CREDIT."

Also add to the end of last sentence the all caps: "... whichever comes last, BUT IN NO EVENT LATER THAN 90 DAYS FOLLOWING THE DENIAL."

Secton 10.8.5

WCom has no problem with 10.8.5

Checklist Item 7

Section 10.5.1.1.2 and 10.6.2.1

On a preliminary basis, I have been advised by my client that WCom will object to the "license" being treated as intellectual property. We are checking with our interllectual property attorneys to get more direction.

Regarding revocation langauge, I would propose the following be added for paragraphs 10.5.1.1.2 and 10.6.2.1 after the previous inserted langauge by U S WEST.

A CLEC will be deemed to have misued this information if it uses it for those prohibited purposes stated in paragraph 10.6.2.3. However, prior to revoking such license, U S WEST shall provide 30-days notice to CLEC advising of the alleged violation of the license granted, during which time CLEC shall have an opportunity to cure the alleged violation. Should CLEC contest the alleged violation, then CLEC shall so advise U S WEST within 30 days after receipt of notice of the alleged violation. The matter will then be promptly submitted to dispute resolution under Section 5.18 of this SGAT. While the matter is pending, U S WEST shall not revoke the license granted until the matter is finally decided under the dispute resolution process either by agreement or after relevant appeal processes have been exhausted.

Checklist Item 13

4.11 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

4.11.1 "End Office Switches" which are used to terminate end user station loops or the equivalent for the purpose of interconnecting to each other and to trunks; and

4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the comparable geographic area as U S WEST's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic, while local tandems provide connections for EAS/Local traffic.

SGAT Paragraph 7.3.7.1

As you recall, we discussed the proposal in this paragraph to apply a tandem switching and a tandem transport/transmission charge to the originating party when USW is performing a transit function. As WCom indicated, we have no issue with the application of the tandem switching charge for the transit function being performed by USW. However, in this situation, the traffic is arriving at the USW tandem for switching (i.e. transit) to a third party via an interconnection trunk that has been jointly provisioned and paid for by USW and the CLEC. Therefore, we believe that further payment for transport in the form of a tandem transport/transmission charge would not be appropriate. USW agreed to review this matter and provide us with a position.

SGAT Paragraph 7.3.8

As a result of our discussions, I believe that we are in agreement as to how to deal with no-CPN traffic as between USW and the CLEC. We discussed the issue of how to deal with traffic, which is passed to CLEC by USW as a transit provider. We also agreed that SGAT Paragraph 7.3.9, which appeared to point the CLEC to the NPAC for assistance in identifying the carrier sending no-CPN traffic was misplaced and that NPAC was no solution for this issue. I have reviewed the present language with our Carrier Billing group, and we would like to propose an additional sentence at the end of the present paragraph, to read,

"U S WEST will provide to CLEC, upon request, information to demonstrate that U S WEST's portion of No-CPN traffic does not exceed 5% of the total traffic delivered."

SGAT Paragraphs Entrance Facilities (7.3.1.1.3.1), Direct Trunked Transport (7.3.2),EICT (7.3.1.2.1), Muxing (7.3.2.3) and NRCs (7.3.3) Proportional Use Billings for Interconnection Facilities - As we discussed, WorldCom would like USW to reconsider its position on the billing of interconnection facilities based on the proportional use that each party makes of these trunks. As USW is aware, FCC Rule 51.709 (b) provides that the "rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carrier's networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods."

In USW's proposed SGAT at Paragraph's 7.3.1.1.3.1 (Entrance Facilities) and 7.3.2.2 (Direct Trunk Transport), USW proposes that proportional use be measured after excluding ISP traffic. WorldCom understands that USW's position is that ISP traffic is "interstate" or "non-local traffic". As a result, USW does not believe that ISP traffic should be subject to the traffic sensitive billings for local call termination or reciprocal compensation as "local" traffic. As we discussed, WorldCom and USW will simply have to agree to disagree on this subject.

However, our disagreement about whether a traffic sensitive call termination/reciprocal compensation rate should apply to ISP traffic should have no bearing on the issue of the shared cost of the interconnection trunking dedicated to the transmission of traffic between the two parties network, which is assessed on a flat rated monthly charge, This traffic, as well as all other types of traffic flowing between the two networks, is in fact utilizing capacity on these interconnection trunks and, under the FCC Rule, that traffic should be included in making a determination as to the assessment of charges based on the proportional use of these trunks. If USW were to agree with WorldCom's position, WorldCom would agree that USW is not waiving its position or otherwise conceding that ISP traffic sent over these trunks should not be compensable under the traffic sensitive billing for call termination/reciprocal compensation. We also discussed briefly WorldCom's position that, in addition to the Entrance Facility and Direct Trunk Transport, we believe that the Expanded Interconnection Channel Termination (EICT - Paragraph 7.3.1.2.1)and Muxing (Paragraph 7.3.2.3) constitute facilities used for the transmission of traffic between the two parties network under the FCC Rule 51.709(b), and therefore should also have costs shared based on proportional use. Furthermore, as you know, the sharing of costs for EICT and Muxing is contained in our present interconnection agreement Logically, Non-Recurring charges for these Rule 51.709(b) facilities should also be shared based on proportional use. We have drafted the following language as an amendment to the Arizona SGAT language (where we agreed to true up proportional use billings after the first Quarter) for your consideration. This language would be inserted at SGAT Paragraphs 7.3.1.1.3.1 (Entrance Facility); 7.3.2.2 (Direct Trunk Transport) 7.3.1.2.1 (EICT), 7.3.2.3 (Muxing) and 7.3.3 (NRCs on interconnection Trunks);

"The provider of the two-way facility will initially share the cost of the facility by assuming an initial relative use factor of 50% for a minimum of one quarter. The nominal charge to the other Party for the use of the facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until the parties agree to a new factor, based on actual minutes of use data to substantiate a change in that factor. Once negotiation of the new factor is finalized, the Parties will retroactively true-up previous charges and the bill reductions and payments will apply going forward, for a minimum of one quarter. By agreeing to this interim solution, the parties do not waive their positions on the nature of traffic delivered to Enhanced Service Providers."

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Decook,Rebecca B - LGA

From: Tom Dixon [Thomas.F.Dixon@wcom.com]
Sent: Wednesday, July 05, 2000 10:16 AM
To: 'Quintana, Becky'; 'Ahlers, Dennis'; 'Ashton, Kristi'; 'Barbara Fernandez'; 'Beck, Steve'; 'Bellinger, Hagood'; 'Berrio, Itzel'; 'Best, Harlan'; 'Bewick, Penny'; 'Bill Steele'; 'Boswell, Rebecca'; 'Brian Petroff'; 'Bridget McGee-Stiles'; 'Brigham, Bob'; 'Bruce Mitchell'; 'Bruce Smith'; 'Bumgarner, Margaret'; 'Carey, John'; 'Ceguera, Phil'; 'Ciccolo, Kris'; 'Clauson, Karen'; 'Cox, Rod'; 'Crain, Andy'; 'Deanhardt, Clay'; 'DeCook, Rebecca'; 'Devaney, John'; 'Dickinson, Carla'; 'Doherty, Phillip'; 'Donahue, Teresa M.'; 'Doyscher, Gena'; 'Dunnington, Terri'; 'Ellison, Maderia'; 'Emory-Cherrix, Lezlee'; 'Flavin, Tom'; 'Freeberg, Tom'; 'Friesen, Letty'; 'Green, Pat'; 'Hammond, Randy'; 'Hopfenbeck, Ann'; 'Houston, Cindi'; 'Howerton, Cynthia'; 'Hsiao, Douglas'; 'Hundley, Joyce'; 'Hydock, Michael'; 'Jennings-Fader, Mana'; 'Jerry Enright'; 'John Epley'; 'Jones, Andrew'; 'Joseph Molloy'; 'Joyce, Craig'; 'Joyce, Rodney'; 'Klug, Gary'; 'Kunkleman, Tim'; 'LaFrance, David'; 'Lipman, Richard'; 'Lubamersky, Nancy'; 'Mailloux, Christine'; 'Mandell, Vicky'; 'Marquez, Tony'; 'Marshall, Kate'; 'McDaniel, Paul'; 'Mike Zimmerman'; 'Munn, John'; 'Murphy, Chris'; 'Murrietta, Rhonda'; 'Neil Langland'; 'Nelson, Thor'; 'Newell, Andrew'; 'Nichols, Robert'; 'Norcross, Michelle'; 'Owens, Jeff'; 'Page, Jennifer'; 'Parker, Pat'; 'Paula Strain'; 'Priday, Tom'; 'Ragge, Joanne'; 'Roth, Diane'; 'Rushing, Cassie'; 'Sacilotto, Kara'; 'Samuel, Joseph'; 'Schmitt, Teresa'; 'Schwartz, Christine'; 'Sekich, Dominick'; 'Shears, Nikki'; 'Shoemaker, Lisa'; 'Simpson, Lori'; 'Spiller, Dudley'; 'Starr, Arleen'; 'Steese, Chuck'; 'Stewart, Karen'; 'Strom, Lise'; 'Sussman, Don'; 'Thayer, Rick'; 'Titzer, Karen'; 'Townsend, Robert'; 'Tribby, Mary'; 'Vince Snowberger'; 'Warren Wendling'; 'Wendie Allstot'; 'Wicks, Jill'; 'Williams, Mark'; 'Williams, Sue'; 'Wilmer'; 'Wilson, Ken'; 'Wolters, Rick'; 'Ziegler, Dave'
Cc: mark.argenbright@wcom.com; michael.henry@wcom.com
Subject: LICENSE AND REVOCATION LANGUAGE (Issue 7.6) and RECIPROCAL COMPENSATION (Issue 13.8)

Issue 7.6

On a preliminary basis, I have been advised by my client that WCom will object to the "license" being treated as intellectual property. We are checking with our interllectual property attorneys to get more direction.

Regarding revoacation langauge, I would propose the following be added for paragraphs 10.5.1.1.2 and 10.6.2.1 after the previous inserted langauge by U S WEST.

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Issue 13.8

I have not received a response to U S WEST's comments about the "nits and nats" language found on Exhibit 56. I have tried contacting both of my Reciprocal Compensation witnesses, Mickey Henry and Mark Argenbright, and have had no response, probably because of the July 4th holiday. Absent a response, and with this 7/5 deadline at hand, I have no option but to declare impasse on language rejected by U S WEST on paragraphs 7.3.7.1, 7.3.1.1.3.1, 7.3.2.1, 7.3.2.3 and 7.3.3, with the hope I will hear from them with a different response either later today or later this week.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	)	DOCKET NO. 97I-198T
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	)	DOCKET NO. 99A-577T

AT&T'S AND WORLDCOM'S RESPONSE TO U S WEST'S RECOMMENDED REDACTION PRINCIPLES FOR THIRD PARTY CONTRACTS

Pursuant to issues 3-3 and 3-4 to the follow up set of workshops, AT&T Communications of the Mountain States, Inc., TCG Colorado and WorldCom, Inc. (collectively "Respondents") recommended redaction principles regarding third party contracts in a filing made on July 14, 2000. In addition to these principles, Respondents offered a copy of redacted Exhibit 1-ATT-59. Qwest Corporation, formerly U S WEST Communications, Inc. ("U S WEST") submitted on July 14, 2000 redaction principles and copies of their proposed redaction of Exhibits 1-AT&T-58 and 1-AT&T-59. In an errata filing received by AT&T on July 19, 2000, U S WEST submitted additional documents to illustrate U S WEST's proposed redaction.

In addition to providing redaction principles and illustrative redacted right of way agreements, in both its original filed "position" statement and its errata filing U S WEST provided extensive additional revisions to its statement of generally available terms and

attachments thereto. AT&T has reviewed these revisions and U S WEST's extensive comments contained in its position statement. AT&T has serious concerns about U S WEST's new proposals is preparing a detailed response. Because U S WEST's revisions include more than merely redaction principles and examples, and such revisions are extensive, AT&T will not include all of its comments in this filing. AT&T intends to respond to U S WEST's proposal no later than July 28, 2000, the time set in the Colorado Issues Log for all parties to submit final comments.

U S WEST's proposals related specifically to redaction are generally acceptable, although a number of U S WEST's proposals are unacceptable. First, U S WEST proposes to provide a CLEC with copies of right of way agreements that are not recorded only after consent from the landowner, which must be obtained by CLEC. U S WEST's position is burdensome to both landowners and CLECs, is unnecessary in that not all right of way agreements require consent and is discriminatory. Most of U S WEST's extensive revisions set forth the machinery for this consent process. AT&T's subsequent comments will address the details of this consent mechanism, as well as other issues unrelated to these redaction principles.

Second, U S WEST's should clarify that its proposal to redact "monetary terms" (which appears to mean only "dollar figures") does not mean that it will redact any portion of the agreement that provides incentives to property owners to promote or sell U S WEST's services to third party tenants or residents of the property. AT&T observes that this particular proposal does not on its face appear to be contrary to AT&T's broader redaction principles that U S WEST may redact only those portions of the agreement that

constitute trade secrets under Colorado law and that U S WEST not redact any provisions that provide incentives to property owners.

Respectfully submitted on this 21st day of July 2000.

The attorneys for AT&T are authorized to sign on behalf of WorldCom, Inc.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.
Thomas C. Pelto
Letty S.D. Friesen

By: _____
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6475

and

WORLDCOM, INC.

Thomas F. Dixon, #500
707 – 17th Street, Suite 3900
Denver, Colorado 80202
(303) 390-6206
(303) 390-6333 (Fax)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))))	DOCKET NO. 97I-198T

AT&T'S FOLLOW-UP COMMENTS
ON RIGHTS-OF-WAY AND PRIVATE PROPERTY CONTRACTS

Pursuant to the action-items developed in the first workshop, AT&T Communications of the Mountain States, Inc. and TCG Colorado (collectively "AT&T") hereby submit these Follow-up Comments. By these comments, AT&T intends to clarify its position on U S WEST Communications, Inc.'s ("U S WEST") obligations regarding the disclosure of its rights-of-way ("ROW")[1] contracts with Colorado private property owners to competitive local exchange carriers ("CLECs").

INTRODUCTION

When U S WEST was the sole local telecommunications provider in its territory, it had, and continues to have, the right of eminent domain to obtain the ROW necessary to serve its customers. § 38-5-105 C.R.S. Before U S WEST could exercise its right of eminent domain, however, Colorado law required, and still requires, that it attempt to "secure by deed, contract, or other agreement such rights-of-way ... ." Id. U S WEST

[1] As used in these Comments the term "ROW" shall mean rights-of-way and include access to poles, ducts, conduits, riser cable, inner ducts, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers or any other requirements need to create path ways.

has done just that; it has entered into ROW contracts and easements with building owners and property owners throughout Colorado.

The incentive that property owners have to enter into ROW agreements are two-fold: (a) they avoid eminent domain proceedings; and (b) the utility company typically provides some type of financial incentive. The contracts and easements provide the terms and conditions of the ROW, and because U S WEST has long been the dominant local telephone utility in its territory, it holds the lion's share of these contracts and easements.

Rather than disclosing the ROW contacts to CLECs, however, U S WEST wants to wrap them in a cloak of secrecy and pretend that it lacks control over the given ROW. And while U S WEST enjoys full knowledge of the terms and conditions upon which the property owner has allowed access to the ROW, it denies such knowledge to its competitors. Nevertheless, U S WEST maintains that its competitors must be bound by the same terms and conditions.[2] Strangely enough, U S WEST dubs this "nondiscriminatory access."[3]

Simply put, nondisclosure of vital information about existing ROW contracts is discriminatory and a violation of the Telecommunications Act of 1996, §§ 224(f)(1) and 271(c)(2)(B)(iii). Therefore, the SGAT should contain language clarifying that U S WEST will make these contracts available upon request (and, if necessary, under an agreement to maintain any confidentiality requirements).

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[2] Weidenbach Affidavit at 70, ln. 9.
[3] Id. at 70, ln. 15.

DISCUSSION

I. As a Legal Matter, U S WEST Should Disclose Its Rights-of-Way Contracts with Private Property Owners.

Section 271(c)(2)(B)(iii) of the Telecommunications Act of 1996 requires that a Bell operating company ("BOC") provide:

> Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates and in accordance with the requirements of section 224.

47 U.S.C. § 271(c)(2)(B)(iii)(emphasis added). Section 224(f)(1) of the Act states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[4] Furthermore, the Federal Communications Commission ("FCC") has clearly stated that BOCs have an obligation to make all "relevant data" related to ROW inquiries available for inspection and copying, subject to reasonable conditions to protect proprietary information.[5]

Generally, ROW agreements describe the scope of use and specify important restrictions on use. At a minimum they reflect the property owner's expectations and, to the extent that a BOC receives certain treatment under them, they reflect the actual "nondiscriminatory" use. In addition, they may reflect the fees and charges the owners deem appropriate. That fact that some agreements may contain "confidentiality" clauses

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[4] 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

[5] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-141 (Aug. 8, 1996) [hereinafter "First Rpt."] at ¶ 1223. The FCC made this determination in the context of considering a denial of access to rights-of-way, and it concluded that efficiently resolving such disputes demanded that all necessary information be made available up front.

making the terms and conditions of the agreements "secret," does not thereby render truly "proprietary information" at risk by disclosing the agreements.

ROW agreements and easements necessarily vest a limited property interest in the utility holding such right for the purpose of allowing the utility to efficiently and effectively establish the necessary infrastructure. *See*, Larson v. Chase Pipe Line Co., 514 P.2d 1316, 1317 (Colo. 1973)(noting that title from the condemnation proceeding passes to the petitioner). While ROW agreements may be negotiated and voluntary, the State has established significant incentives for property owners to grant ROW agreements. For example, a prime incentive is the right of eminent domain provided to a utility to have property condemned for public use should the owner and the utility fail to agree. § 38-5-105 C.R.S. The significance of this tool of eminent domain has been recognized at the federal level by the FCC. First Rpt. at ¶ 1181 (initially requiring utilities to exercise eminent domain authority to expand rights-of-way over private property to accommodate requests for access and the need for expansion of the existing ROW). Upon reconsideration, the FCC determined further that the exercise of eminent domain authority was not a federal requirement, but rather a matter for state law.[6]

As a result of this framework, U S WEST has been able to effectively and efficiently obtain ROW agreements throughout its territory. Historically as a monopoly, U S WEST enjoyed significant advantages in acquiring these rights through its ability to leverage the threat of an eminent domain proceeding to acquire advantageous ROW terms quickly and efficiently.

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[6] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration, CC Docket No. 96-98 and CC Docket No. 95-185, FCC 99-266 (Oct. 26, 1999) at ¶38.

Further evidence of U S WEST's unique advantages stemming from its monopoly status, is the fact that U S WEST's state-approved tariffs provide that any agreement to serve is accompanied by a corresponding grant from the owner of an easement.[7] Clearly, U S WEST has "*ownership or control*" of the rights-of-way granted through private contracts and easements. Moreover, the nature and scope of "ownership and control" cannot be adequately determined if U S WEST can simply claim that it lacks any ownership and control while simultaneously refusing to disclose the very document that establishes its rights.

By refusing to reveal the ROW agreements, U S WEST creates two distinct problems: (1) it cloaks its "non-discriminatory" treatment in secrecy, the validity of which can only be tested through discovery of the agreement in litigation; and (2) it places property owners and CLECs in the untenable position of having to face numerous ROW negotiations or numerous eminent domain proceedings from various utilities should U S WEST deny access or refuse to expand its existing access. Furthermore, requiring U S WEST to reveal these contracts and easements prevents U S WEST from entering into or enforcing exclusive service agreements with building and property owners. That is, disclosure prevents U S WEST and the property owners from locking-up numerous customers and precluding competition because such conduct, to the extent memorialized in the contract or easement, is revealed upon disclosure.

II. As a Practical Matter, U S WEST Should Disclose its Rights-of-Way Contracts and Easements with Private Property Owners.

U S WEST, by virtue of the monopoly position it has historically enjoyed, is in a position to thwart competition, unless it is affirmatively obligated to provide other

[7] U S WEST Communications Exchange and Network Services Tariff, Colo. PUC No. 15 at § 4.4(B)(7).

competitors with equivalent access to the rights it enjoys. While new competitors may also avail themselves of condemnation rights upon U S WEST's or the property owner's refusal to negotiate access, from a competitive and practical viewpoint, the delay that this would otherwise entail is a significant barrier to offering the tenants or other customers a competitive alternative. On the one hand, U S WEST has acquired its extensive ROW rights over decades by virtue of its unique status of state-supported monopoly. On the other hand, a new competitor, lacking either the special status, resources or leverage attendant to the former monopoly environment, faces a daunting task to acquire the necessary ROW rights from "scratch." In order to level the playing field and ameliorate the disparate positions of the parties, it is only reasonable to require U S WEST to provide copies of the ROW agreements that it has with the subject property owners.

By requiring disclosure of ROW agreements, the Commission would accomplish two pro-competitive goals at the same time. First, the Commission would allow competitors to proceed with their own negotiations with owners on a well informed, knowledgeable basis as to what has been acceptable to the owner in the past. The practical result will be faster, economic negotiations that allow for effective business planning and prompt build-out of additional infrastructure, if necessary. Second, the Commission would have established a self-executing mechanism that polices U S WEST and prevents it from entering into agreements that either explicitly or implicitly discriminate against other competitors or create exclusivity arrangements. In addition, this would protect U S WEST from being forced into exclusivity arrangements by over-zealous property owners. Simply reporting to the property owners that other carriers have a right to examine the agreement may discourage unfair or extortionist tactics.

In addition to the practical outcome, U S WEST has—in the past—argued that the ROW agreements are "proprietary" or represent trade secrets of U S WEST. However, upon close inspection this argument must fail. First, ROW agreements, backed up by the state-created eminent domain rights, cannot be considered "proprietary" nor trade secret.[8] It is axiomatic that a property right established solely by virtue of state law cannot be considered the "secret property of the ILEC."

Second, if such argument were accepted, contrary to the FCC's determination that intellectual property claims of confidentiality are inherently suspect and anti-competitive, U S WEST would have created an umbrella defense that it could apply to almost every interconnection and other statutorily-created obligation it has. In fact, the FCC has made clear that incumbents cannot evade their statutory obligations by making their arrangements with third parties confidential.[9] Although the FCC permitted utilities to prevent disclosure of proprietary information contained within the pool of "relevant" information, this limited exception must be used only for truly proprietary information and not a blanket prohibition on providing the agreements. To the extent that U S WEST or the property owner have real proprietary information contained within the agreement, that material alone should be subject to "reasonable conditions to protect proprietary information." Reasonable conditions may well include subjecting the proprietary term to the Commission's confidentiality rules such that the term can be judged against a standard of discrimination without being disclosed widely among competitors.

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[8] In fact, U S WEST would be hard pressed to prove that its ROW agreements rise to the level of a trade secret. *See* § 7-74-101 C.R.S. *et seq.* (Colorado Uniform Trade Secret Act).

[9] *See* In the Matter of the Implementation of Infrastructure Sharing Provision in the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd. 5470 (1997) AT ¶ 63.

Finally, by affirming U S WEST's argument, the whole grant of non-discriminatory access to rights-of-way would be rendered completely ineffective. This section of the Act would literally become meaningless. If a CLEC is not able to obtain a copy of the agreements at issue, what possible meaning can be ascribed to U S WEST's duty to afford nondiscriminatory access on rates, terms and conditions that are consistent with § 224. Furthermore, how can U S WEST expect to bind CLECs to the terms and conditions of these ROWs, while simultaneously demanding that the CLECs be kept from the very terms by which they are purportedly bound?

Accepting U S WEST's argument would in effect mean that access to ROW could only be obtained either through U S WEST acting as the sole controlling agent of the CLEC or by virtue of a separate negotiation with the owner. If each CLEC, without any prior knowledge of the ILEC/property owner agreements, were forced to negotiate new and (by definition different) agreements, then the question must be posed why Congress would have granted CLECs any nondiscriminatory access right in the first place. Why even mention this topic if a CLEC is no better off than it would be in the absence of the statute?

III. The FCC's Notice of Proposed Rulemaking, Which Questions its Authority to Impose Federally Mandated Non-discrimination Obligations on Building Owners or Private Property Owners, Does Not Thereby Mean that the FCC Questions its Authority and Congressional Mandate to Impose Nondiscrimination Obligations Upon ILECs, Like U S WEST.

In FCC Order number FCC 99-141, it seeks comment on its federal statutory authority to require building owners or property owners to comply with the nondiscrimination requirements outlined in the Telecomunications Act of 1996.[10] In its

[10] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,

general discussion and request for further comment related to this topic, the FCC notes that it has previously determined that it has such authority under § 207 of the Act to require property owners to allow antennas on their premises. First Rpt. at ¶ 59. Nevertheless, it seeks additional input as to the authority and its scope, if such authority exists.

The FCC's query into its direct authority over property owners, apart and distinct from its authority over incumbents, in no way diminishes the incumbents obligations to provide nondiscriminatory access to ROW and all the relevant information associated therewith. Rather the FCC remains committed to bringing:

> the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. In the 1996 Act, Congress emphasized its intent to bring these benefits "to all Americans." To the extent that any class of consumers is unnecessarily disabled from choosing among competing telecommunications service providers, the achievement of this Congressional goal is placed in jeopardy.

First Rpt. at ¶ 6. Where the ROW agreements entered into by carriers incumbents, such as U S WEST, cannot be disclosed to competing carriers, U S WEST can hide not only any special treatment it receives from the property owners, but it can also selectively apply the terms and conditions it wants to its competitors. Moreover, any secret terms that create, whether expressly or in effect, exclusivity or preferential treatment of U S WEST stand as a barrier to competition that unnecessarily disables the residents or tenants of the property owned by a third party from reaping the benefits of competition.

First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-141 (Aug. 8, 1996) [previously referred to as the "First Rpt."] at ¶¶ 52-63

As part of this nondiscriminatory obligation, U S WEST must provide access to all ROW agreements, including those with private landowners, upon request by the CLEC. Access to such agreements is integral to assuring that U S WEST provides nondiscriminatory access to ROW at just and reasonable rates.

Respectfully submitted on this 22nd day of June 2000.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.
Thomas C. Pelto
Letty S.D. Friesen

By: _____
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6475

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996	)	DOCKET NO. 97I-198T
IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	)	DOCKET NO. 99A-577T

AT&T'S PROPOSAL FOR REVISIONS TO SGAT PROVISIONS RE: POLES, DUCTS, CONDUITS AND RIGHT-OF-WAY

The following are AT&T's suggested revisions to the SGAT language presented by U S WEST regarding the Poles, Ducts, Conduits and ROW sections:

1. The introductory statement in sections 10.8.1.1, 10.8.1.2 and 10.8.3 should be re-stated as follows:

Where it has ownership or control, either directly or indirectly, U S WEST will provide ...

2. U S WEST's proposal in section 10.8.2.4 should be rephrased as:

> Extensive requests involve the gathering of plats from more than five (5) locations, span more than five (5) Wire Centers or consists of five (5) or more separate Wire Center requests submitted simultaneously. Response to extensive requests will be provided within a reasonable interval, not to exceed forty-five (45) days.

3. AT&T accepts the U S WEST proposal for section 10.8.2.18 as put before the Washington Commission.

4. For Section 10.8.2.22, AT&T proposes the following:

If any facilities are found attached to Poles/Innerduct for which no order is in effect, U S WEST shall promptly notify CLEC of such discrepancy. U S WEST and CLEC shall cooperate in curing such discrepancy within 30 days of such notice or such other period as the parties may agree. If CLEC fails to cure such discrepancy within the above referenced period, U S WEST may remove CLEC's facilities without liability and the costs of such removal shall be borne by CLEC unless the matter has been referred to the dispute resolution procedure contained herein.

5. For Section 10.8.4.1.3, AT&T proposes the following (fee element still to be determined):

Inquiry Review – ROW – Prior to ordering access to ROW, U S WEST shall, upon request of CLEC, provide a copy of ROW agreements to CLEC within 10 business days of the request. U S WEST may redact such information in the agreement as provided that constitute such trade secret or proprietary information which if otherwise disclosed would both violate U S WEST obligations to the property owner for which the ROW runs and does not involve information that could indicate or be used as evidence of discriminatory treatment for CLEC.

6. For consistency and clarity, AT&T suggests that U S WEST alter its Colorado SGAT to reflect the decisions of the arbitration between U S WEST and AT&T conducted in Washington. Following is the proposed language from the Washington arbitration modified slightly to replace "AT&T" references with generic "CLEC" references.

(Section 47.2 of the Washington ICA)

U S WEST warrants that it will provide to CLECs nondiscriminatory access to poles, pole attachments, ducts, inner ducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, ROW, and other pathways owned or controlled by U S WEST, using capacity currently available or that can be made available. U S WEST shall have the full burden of proving that such access is not technically feasible. To the extent U S WEST proves infeasibility, U S WEST shall be required to provide to CLEC alternative suitable access which will not impair the CLEC's ability to provide its Telecommunications Services. Such alternative access shall be technically equivalent to the requested access and shall be subject to the same terms, conditions and price as the requested access.

(Section 47.3 of the Washington ICA Definitions)

"Poles, ducts, conduits and ROW" refer to all the physical facilities and legal rights which provide for access to pathways across public and private property.

These include poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights-of-way, or any other requirements needed to create pathways. These pathways may run over, under, across or through streets, traverse private property, or enter multi-unit buildings. A Right-of-Way ("ROW") is the right to use the land or other property owned, leased, or controlled by any means by U S WEST to place poles, ducts, conduits and ROW or to provide passage to access such poles, ducts, conduits and ROW. A ROW may run under, on, or above public or private property (including air space above public or private property) and shall include the right to use discrete space in buildings, building complexes, or other locations.

(Section 47.4 of the WA ICA Requirements)

U S WEST shall make poles, ducts, conduits and ROW available to CLEC upon receipt of a request for use within the time periods provided in this Section, providing all information necessary to implement such a use and containing rates, terms and conditions, including, but not limited to, maintenance and use in accordance with this Agreement and at least equal to those which it affords itself, its Affiliates and others. Other users of these facilities, including U S WEST, shall not interfere with the availability or use of the facilities by CLEC.

U S WEST shall not prevent or delay any third party assignment of ROW to CLEC.

U S WEST shall offer the use of such poles, ducts, conduits and ROW it has obtained from a third party to CLEC, to the extent such agreement does not prohibit U S WEST from granting such rights to CLEC. They shall be offered to CLEC on the same terms as are offered to U S WEST. U S WEST shall exercise its eminent domain power and assist CLEC in obtaining licenses when necessary to accommodate CLEC's request for access to ROW. If U S WEST exercises its eminent domain authority pursuant to any state law, then the CLEC shall reimburse U S WEST for U S WEST's reasonable costs, if any, incurred as a result of such exercise of its eminent domain authority.

Respectfully submitted on this 22nd day of June 2000.

AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC.
Thomas C. Pelto
Letty S.D. Friesen

By: _____
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6475

Language attested to by AT&T Commercial Attorney: Richard E. Thayer.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of	)	
	)	
The Investigation into Qwest	)	
Communications, Inc.'s Compliance with	)	Docket No. 97I-198T
§ 271(c) of the Telecommunications Act of	)	
1996	)	

VOLUME I

COMMISSION STAFF REPORT ON QWEST'S COMPLIANCE WITH NON-OPERATIONS SUPPORT SYSTEMS (OSS)

CHECKLIST ITEMS:

No. 3 – Poles, Ducts, Conduits, and Rights-of-Way

No. 7 – 911 and E911 Access; Directory Assistance/ Operator Services

No. 8 – White Page Directory Listings

No. 9 – Numbering Administration

No. 10 – Databases and Associated Signaling

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CHECKLIST ITEM NO. 3 - POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

24. Qwest asserts that it provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way and that it has a legal obligation to do so within the terms of the SGAT and in existing Commission approved interconnection agreements. CLECs took exception to the SGAT provisions that require reciprocity of access by CLECs. This issue reached impasse. Issues that also reached impasse were: (1) CLECs claim that they are entitled to access to Qwest's rights-of-way agreements with private parties without the prior consent of the private party unless the agreement expressly precludes disclosure. Qwest disagrees. (2) Qwest asserts that CLECs should obtain owner consent to Qwest's opportunity to cure defaults or breaches of underlying agreements by CLECs. AT&T does not agree. (3) WorldCom contends that Qwest's SGAT contains provisions that violate the FCC's requirement that response to access requests must be provided within 45 days.

25. Pending resolution of the impasse issues, Staff believes that Qwest otherwise satisfies the requirements for compliance with Checklist Item No. 3. This compliance assessment is not further disputed by parties.

CHECKLIST ITEM NO. 7 – 911/E911 ACCESS; DIRECTORY ASSISTANCE/ OPERATOR SERVICE

26. Qwest asserts that it provides nondiscriminatory access to 911/E911, and directory assistance and operator services. Further, it has a legal obligation to do so within the terms of the SGAT and in existing Commission approved interconnection agreements.

all involved parties on August 3, 2000, by which act Workshop Issue ID Nos. 10-7 and 7-2 were closed. Workshop Issue ID Nos. 10-5 and 10-6 remained at impasse.

6. Staff Compliance Assessment

331. Based on the testimony, comments, exhibits submitted, and workshop discussions, Qwest has demonstrated that it makes available to the CLECs nondiscriminatory access to call-related databases and associated signaling, pending resolution of the impasse issue concerning "per-query" access versus total availability of the ICNAM database. This issue remained at impasse and legal briefs were filed by parties. The issue will be considered by the Commission in accordance with the dispute resolution process ordered for this docket.

332. This compliance assessment may be reviewed in the context of Qwest's performance against those performance measurements established in the ROC OSS Test to assure that Qwest continues to provide nondiscriminatory access as described herein. These directly related performance measurements include: PIDs DB-1, DB-2 and other possible measurements which may be considered by the ROC.

Memorandum

06/22/00

To: Colorado and Washington Commissions

From: Rick Thayer

Re: 271 Workshops – Poles, Ducts, Conduits and ROW

The following are AT&T's suggested revisions to the SGAT issues and language presented by U S WEST in respect to the Poles, Ducts, Conduits and ROW sections.:

1. The introductory statement in sections 10.8.1.1, 10.8.1.2 and 10.8.3 should be restated as follows:

   Where it has ownership or control, either directly or indirectly,

2. U S WEST's proposal in section 10.8.2.4 should be rephrased as:

   Extensive requests involve the gathering of plats from more than 2 locations, span more than 2 Wire Centers or consists of ten (10) or more separate Wire Center requests submitted simultaneously. Response to extensive requests will be provided within a reasonable interval, not to exceed fort-five (45) days.

3. AT&T accepts the US WEST proposal for section 10.8.2.18 as put before the Washington Commission.

4. For Section 10.8.2.22, AT&T proposes the following:

   If any facilities are found attached to Poles/Innerduct for which no order is in effect, U S WEST shall promptly notify CLEC of such discrepancy. U S WEST and CLEC shall cooperate in curing such discrepancy within 30 days of such notice or such other period as the parties may agree. If CLEC fails to cure such discrepancy within the above referenced period, U S WEST may remove CLEC's facilities without liability and the costs of such removal shall be borne by CLEC unless the matter has been referred to the dispute resolution procedure contained herein.

WUTC
DOCKET NO. UT-003022
EXHIBIT # 221
ADMIT ☑ W/D ☐ REJECT ☐

5. For Section 10.8.4.1.3, AT&T proposes the following (fee element still to be determined):

> Inquiry Review – ROW – Prior to ordering access to ROW, U S WEST shall, upon request of CLEC, provide a copy of ROW agreements to CLEC within 10 business days of the request. U S WEST may redact such information in the agreement as provided that constitute such trade secret or proprietary information which if otherwise disclosed would both violate U S WEST obligations to the property owner for which the ROW runs and does not involve information that could indicate or be used as evidence of discriminatory treatment for CLEC.

6. AT&T suggests that the U S WEST SGAT reflect the decisions of the arbitration of the U S WEST and AT&T arbitration conducted in Washington and include the following language reflected in said agreement:

> (Section 47.2 of the Washington ICA) U S WEST warrants that it will provide to AT&T nondiscriminatory access to poles, pole attachments, ducts, inner ducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, ROW, and other pathways owned or controlled by U S WEST, using capacity currently available or that can be made available. U S WEST shall have the full burden of proving that such access is not technically feasible. To the extent U S WEST proves infeasibility, U S WEST shall be required to provide to AT&T alternative suitable access which will not impair AT&T's ability to provide its Telecommunications Services. Such alternative access shall be technically equivalent to the requested access and shall be subject to the same terms, conditions and price as the requested access.[1]
>
> (Section 47.3 of the Washington ICA Definitions)
>
> "Poles, ducts, conduits and ROW" refer to all the physical facilities and legal rights which provide for access to pathways across public and private property. These include poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights-of-way, or any other requirements needed to create pathways. These pathways may run over, under, across or through streets, traverse private property, or enter multi-unit buildings. A Right-of-Way ("ROW") is the right to use the land or other property owned, leased, or controlled by any means by U S WEST to place poles, ducts, conduits and ROW or to provide passage to access such poles, ducts, conduits and ROW. A ROW may run under, on, or above public or private property (including air space above public or private property) and shall include the right to use discrete space in buildings, building complexes, or other locations.
>
> (Section 47.4 of the WA ICA Requirements)

[1] Per Order at page 29, Issue 55.

U S WEST shall make poles, ducts, conduits and ROW available to AT&T upon receipt of a request for use within the time periods provided in this Section, providing all information necessary to implement such a use and containing rates, terms and conditions, including, but not limited to, maintenance and use in accordance with this Agreement and at least equal to those which it affords itself, its Affiliates and others. Other users of these facilities, including U S WEST, shall not interfere with the availability or use of the facilities by AT&T.

U S WEST shall not prevent or delay any third party assignment of ROW to AT&T.

U S WEST shall offer the use of such poles, ducts, conduits and ROW it has obtained from a third party to AT&T, to the extent such agreement does not prohibit U S WEST from granting such rights to AT&T. They shall be offered to AT&T on the same terms as are offered to U S WEST. [2] U S WEST shall exercise its eminent domain power and assist AT&T in obtaining licenses when necessary to accommodate AT&T's request for access to ROW. [3] If U S WEST exercises its eminent domain authority on behalf of AT&T at AT&T's request, then AT&T shall reimburse U S WEST for U S WEST's reasonable costs, if any. incurred as a result of such exercise of its eminent domain authority.

[2] Per Order at pages 29-30, Issue 56.
[3] Per Order at pages 29-30, Issue 56.

First! "Your News Connection" from AT&T Labs' Information Research Center

FCC Chairman Kennard Reassures America's Consumers on Real Choice for Telecommunications Providers FCC Commits to Vote within Two Weeks

Date: Friday, September 15, 2000
Source: PR Newswire

WASHINGTON, Sept. 14 /PRNewswire/ via NewsEdge Corporation -- The Federal Communications Commission (FCC) today reaffirmed its commitment to ensuring consumer access to the telecommunications provider of their choice when it announced that the vote on nondiscriminatory access requirements to multi tenant buildings would take place within the next two weeks. In his remarks, Chairman Kennard urged his fellow commissioners to act on this item in the next two weeks and specifically thanked Commissioner Furchtgott-Roth for his commitment to vote on this important issue within that time frame. Commissioner Furchtgott-Roth had requested that the vote be temporarily deferred.

In his remarks addressing the nondiscriminatory access item, Chairman Kennard stated that, "It's a very important item because it will provide tenants in office and apartment buildings real choice in telecommunications providers." The Chairman went on to state that, "The issues in this proceeding are complex, but American consumers deserve the benefits of competition as quickly as possible."

"American consumers everywhere should be heartened by the Chairman's positive remarks that consumers should have real choice when selecting a telecommunications provider," said Tom Cohen, spokesman for the SBPP, a growing coalition of competitive carriers, consumer groups, software providers, and telecommunications equipment providers. "We believe these remarks demonstrate the FCC's commitment to consumer interests, and we are optimistic that the FCC will take the appropriate steps to ensure consumer choice when selecting a telecommunications provider."

About the SBPP

The Smart Buildings Policy Project is a growing coalition of telecommunications carriers, equipment manufacturers, and organizations that support nondiscriminatory telecommunications carrier access to tenants in multi-tenant environments. The SBPP presently includes Alcatel, the Association for Local Telecommunications Services (ALTS), AT&T Corp, the Commercial Internet Exchange, the Competition Policy Institute, CompTel (Competitive Telecommunications Association), Digital Microwave Corporation, Focal Communications, The Harris Corporation, the Information Technology Association of America (ITAA), the International Communications Association (ICA), Lucent Technologies, NEXTLINK Communications, Nokia Inc., Telecommunications Industry Association, P-Com Inc., Siemens, Teligent, Inc., Time Warner Telecom, Winstar Communications, Inc., Wireless Communications Association and WorldCom.

For more information visit www.buildingconnections.org.

SOURCE Smart Buildings Policy Project

/CONTACT: Zachary Tindall of Ketchum Public Relations, 202-835-8819, zachary.tindall@ketchum.com; or Stacy Coggins of Crawford Public Relations, 703-318-5460, scoggins@crawfordpr.com; both for Smart Buildings Policy Project/ /Web site: http://www.buildingconnections.org/

Retrofit Agreement

TELEPHONE LICENSE AGREEMENT

This License Agreement for Telephone Services and Systems ("Agreement") entered into between [illegible], a Oregon L.L.C., ("Owner"), whose address is [illegible] Avenue, Portland, OR 97201, and GTE Northwest Incorporated, a Washington corporation ("Company") whose address is 1800 41st Street, Everett, Washington 98201, dated as of this _____ day of_____, 1997.

WITNESSETH:

Owner is operating a multi-family apartment project that contains approximately 200 units known as [illegible] located at [illegible] !oad, Clackamas, OR , on land more particularly described on Exhibit "A" attached hereto (the land and the improvements now or hereafter located thereon are collectively referred to as the "Property");

Company is a provider of local telephone service with additional added value features such as call waiting, call forwarding, three way calling, etc., and provides nondiscriminatory access to long distance telephone services and other telecommunications services;

Owner wants to retain Company to operate and to maintain the cabling, wiring and associated equipment needed to provide telecommunications service to the Property and all occupants thereof, from the point of demarcation of the public switched telephone network to the telephone jacks in each occupant's apartment (hereafter, the "Telephone System") for the benefit of the residential occupants of the Property ("Residents") and Owner;

Company wants to operate and maintain the Telephone System and provide Telephone Services to Residents and Owner upon the terms and conditions set forth in this Agreement.

AGREEMENT

Company and Owner agree as follows:

1. Company shall make all repairs at no cost to Owner unless the problem was caused by Owner, its agents, employees, or contractors. In the event of a dispute concerning the cause of any problem between the Owner and Company, dispute resolution procedures shall be followed.

2. Company's obligation to operate, maintain, restore and repair the System does not include the following:

a. Owner-requested or Subscriber-requested additions, changes (including those requiring the installation or movement of wiring within an individual apartment, agreeing however that all such wiring must be concealed to the fullest extent possible, but bearing in mind that Company is not obligated to install or relocate wiring within the existing walls), relocations, removal, or additional equipment, subject to Owner's written approval, which shall be charged to the requesting party at Company's then prevailing rates.

b. Loss or recovery of Owner or Resident electronically generated or stored data. Owner and Residents are responsible for providing adequate back-up for data and for restoring data to repaired equipment.

D. Subscriber Rates: Any Subscriber who contracts for Services may elect to subscribe to one or more of the additional features then being offered as part of the Services. The rates for Services are subject to change during the term of this Agreement at the option of the Company or as necessary to comply with applicable tariffs or regulations.

E. System Revenues: Revenues shall be billed and collected as follows:

1. Company shall be entitled to the total revenues collected or arising from the Services or the operation of the System. The term "Total Revenues" means all amounts charged or received by Company for the provision of the System and associated Telephone Services including, but not limited to, the monthly charges for all Services, including long distance Services, installation charges and fees charged for service calls, etc.

2. Company shall be responsible for billing and, in strict accordance with applicable laws, the collection of all revenues arising from the Services and the operation of the System – Owner shall have no responsibility therefore. In no event shall Company utilize collection methods in violation of law. Company shall indemnify, defend and hold Owner, its agents, partners, employees, officers, directors, and the manager of the Property harmless from cost, liability, expense, loss and damage arising out of or in connection with all collection activities. Company shall bill each Subscriber individually.

F. Compensation to Owner: Company shall compensate Owner on a quarterly basis during the term of this Agreement as described in Exhibits "D" and "E" attached to this Agreement. Payment to Owner by Company shall be made within thirty (30) working days following the end of the quarter in which compensation is earned by Owner.

G. Control, Safeguard and Updates of the Systems:

1. Control: Company has the right of control over the Telephone System in order to operate and maintain it. At no time during the term of this Agreement may Owner or any third party use the Telephone System for any purpose other than as specified in this Agreement except with the prior consent of Company. Company shall give its consent to use of portions of the Telephone System which are not owned by Company unless Owner's use will interfere with Company's ability to provide the telephone services.

2. **Ownership of Fixtures:** All wiring and cabling that is part of the telephone System and is owned by Company on the date of this Agreement is and shall remain property of Company. All wiring and cabling that is property of Owner on the date of this Agreement, as well as all hardware installed in individual apartment units (collectively, the **Fixtures**), is and shall remain property of Owner. Company has only the right to control for purposes of executing its obligations under this Agreement.

3. **Ownership of Equipment:** Title to the Equipment described in Exhibit "C" remains vested in Company. Company has the right to control it for purposes of executing its obligations under this Agreement.

4. **Upgrades:** Company shall keep the Telephone System and Telephone Services current and competitive with those of the local serving area. Company shall use its best efforts to update or upgrade the Telephone System and Telephone Services to accommodate competitive changes as soon as reasonably possible. However, Owner acknowledges that Company did not install the Telephone System, and it may not be designed and built to the standards Company uses in building similar systems for Owner. Consequently, Owner agrees that Company has no obligation to replace the complete Telephone System upon assuming responsibility for it. Owner and Company agree to consult as necessary to ensure the Telephone System remains competitive. Additionally, Owner is aware that future upgrades to ensure the Telephone System remains competitive may require placing facilities in visible locations. Such upgrades will be undertaken only upon Owner approval.

5. **Initial Inspection:** Company entered the Property and conducted a thorough inspection to determine the specifications and condition of the Telephone System on the Property, including the Fixtures and Equipment. Company's findings are appended to this Agreement as **Exhibit "J"**.

H. Compliance With Laws: Company shall operate the System and Services in accordance with all federal, state, and local laws, codes and ordinances, if any, which may be applicable thereto.

I. Subcontracts: Any portion of the Services not performed by Company shall be performed under subcontracts with subcontractors reasonably acceptable to Owner. All subcontracts shall conform to the requirements of this Agreement, with respect to the respective Service, or part thereof, supplied by the subcontractor, but the ultimate Service obligations hereunder shall remain the responsibility of the Company.

PART II
Owner's Obligations

A. Grant of License: Owner acknowledges that Company will expend substantial time, resources and money in meeting its obligations under this Agreement, and that Company may only recoup its investment by providing Services to the Property throughout the term of this Agreement and by collecting revenues from Subscribers. As a result thereof, Owner grants to Company the following rights, subject to termination as provided herein:

1. The right to provide the Telephone Services to Residents, except as limited by law or regulation, subject to the rights of Residents to obtain calling plans and services.

2. The right to solicit Residents of the Property at all reasonable times to subscribe to its Services; provided that on-site solicitation shall be conducted only with the prior approval of the on-site manager of the Property and within the information/clubhouse building and, as approved by Owner in its sole discretion, in other common areas, neither Company nor its representatives may solicit business door-to-door.

3. Owner agrees that Owner shall not, during the term of this Agreement, grant any other service provider the right or license to provide or solicit the Telephone Services to the Property except as required by law or regulation. Owner shall also not directly or indirectly provide any such Service to the Property or Residents, except as noted above.

B. Property Access:

1. During the term of this Agreement, Owner grants to Company the right of access to the physical components of the System, subject to Residents' privacy rights and rights under their lease with respect to access to their apartments, within the Property for accomplishment of the obligations of Company under this Agreement twenty-four (24) hours a day, seven (7) days a week. This right extends following termination of this Agreement for any period of time the Company continues to provide service to subscribers for purposes of satisfying ongoing obligations.

2. If requested by a Resident, and with written authorization from the Resident, Owner will provide access to that Resident's apartment unit for installation or repair of inside wiring, associated hardware or the System by Company or its agents.

3. In addition, Owner shall:

a. Provide, at its own expense, facilities space for the interconnection to the public switched network and maintenance of the system pursuant to system requirement documents approved by both Owner and Company;

b. Cooperate with Company's and its agent's requests for maintenance testing or installation of new services to subscribers;

c. Designate and identify to Company an individual to serve as a primary contact for Owner for the term of this Agreement, subject to change upon notice;

d. Not alter the System in any way without the prior written consent of Company.

C. Information/Cooperation: Owner shall (subject to Company providing an adequate supply of materials, where required):

1. Provide to each Resident a copy of the information most recently provided by Company outlining the Telephone Services provided by Company;

2. Cause its on-site Property management and leasing personnel to cooperate fully with Company in all reasonable respects, including, without limitation, providing Company's promotional materials to Residents of the Property promptly upon execution of leases;

3. Receive the application of any Resident who desires to initiate Telephone Services and fax it to Company at a designated telephone number; and

4. When any Resident terminates Services and moves out of the Property, notify Company of such fact.

D. Lender's Consent: Owner shall use reasonable efforts to obtain and deliver to Company a "Lender's Consent," in the form set forth in Exhibit "F" attached hereto, duly executed by all lenders holding

a security title or lien upon the Property. If Owner does not provide any Lender's Consent within sixty (60) days after execution of this Agreement, Company may, as its sole and exclusive remedy, terminate this Agreement within thirty (30) days after the end of the sixty (60) day period. If Company elects to so terminate the Agreement, Owner shall pay to Company the Company's out-of-pocket costs. If Owner obtains additional or permanent or restructured financing during the term of this Agreement, Owner shall obtain a Lender's Consent form from the additional lenders, provided that if Owner is unable to obtain such consent, then Company shall have the right to terminate this Agreement within thirty (30) days after Owner notifies Company that it has been unable to obtain such consent.

E. Subordination of Agreement: This Agreement is at all times secondary, subordinate, and inferior to the lien or security interest of any construction or permanent lender now or hereafter placed upon the Property. Company shall, at any time, execute all documents necessary to evidence or confirm this subordination.

F. Utility Interruption: Owner is not responsible for or liable to Company for any fluctuation, peaking, slow-down, interruption or reduction in electrical power to the Systems or to the Control areas, unless the problem is caused solely by Owner, its agents, employees, or contractors.

PART III
Administration

A. Indemnity:

1. Company shall, subject to paragraph III(C), indemnify, defend, and hold harmless Owner and its property manager and their respective officers, directors, partners, and employees from all losses, claims, death, bodily injury, and damage to person or property arising directly or indirectly out of Company's installation, operation or maintenance of the System or provision of the Services, to the extent proximately caused by the negligence of Company's employees, subcontractors or agents in performing services under this Agreement. This indemnity does not extend to any portion of the injury, death or damage caused by either the sole or contributing negligence of Owner or third parties not affiliated with Company. Company's obligation with respect to damage to the Systems is limited to repair or replacement, at Company's option, of the damaged items.

2. Owner shall, subject to paragraph III(C), indemnify, defend, and hold harmless Company and its officers, directors, and employees from all losses, claims, death, bodily injury, or damage to person or property arising out of, directly or indirectly, Owner's operation of the Property to the extent proximately caused by the negligence of Owner, its employees or agents, except to the extent due to Company's operation, or maintenance of the Systems or provision of the Services or to the negligence of Company, its agents, employees, or contractors.

3. These indemnities do not apply unless the Party to be indemnified gives written notice to the indemnifying Party within fifteen (15) days of receipt of notice of any claim, and informs indemnifying Party in writing of any subsequent written communications regarding the claim, and fully cooperates with indemnifying Party in the defense of the claim. Indemnifying Party shall have sole control of the defense of the claim and of all negotiations for its settlement or compromise.

4. These obligations survive the termination of the Agreement.

B. Insurance: Company, at its own cost and expense, shall maintain and cause its contractors and subcontractors that perform any obligations of Company under this Agreement to maintain in full force and effect for the term of this Agreement the following policies of insurance:

1. Workers' Compensation Insurance in compliance with the laws of the state of Oregon.

2. Commercial General Liability insurance on an "occurrence" basis against all claims for Personal Injury, Bodily Injury and Property Damage Liability in a combined single limit of not less than $2,000,000.

3. Automobile Liability Insurance on all owned, non-owned, or hired vehicles and equipment used in performance of the work provided for in this Agreement in amounts not less than $1,000,000, single limit, each accident, for bodily injury liability and property damage combined.

4. All employees of Company and employees of agents performing the Services shall be covered by a Fidelity Bond or crime insurance with limits not less than $50,000.

5. Company may also carry, at its own expense, such other insurance as it may desire for its own protection.

6. Company shall provide to Owner upon request a certificate of insurance attesting to Company's coverage required herein, providing that such policies shall not be canceled without thirty (30) days prior written notice to Owner. Company shall deliver new certificates to Owner no later than thirty (30) days prior to the end of the term of each required policy.

C. Limitation of Liability: Under no circumstances shall Company or Owner be liable for incidental, consequential, or special damages, notwithstanding their foreseeability or disclosure by Owner to Company or vice versa, including, but not limited to, damages arising from delay, loss of data, profits or goodwill. Company shall bear no liability for use of the System or Services in connection with life support systems or devices. Company may from time to time provide advice, make recommendations or supply other analysis related to the System and Services provided under this Agreement, and, while Company shall use reasonable efforts in this regard, Owner acknowledges and agrees that this limitation of liability shall apply to provision of such advice, recommendations and analysis. Company makes no warranty for use of the System as a component in life support devices or systems.

D. Hazardous Substances: Except as disclosed to and acknowledged in writing by Company, Owner certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) other than normal household and janitorial supplies and chemicals and consumer amounts of normal household petroleum products at any location on the Property where Company is to perform Services under this Agreement. If, during its performance, Company employees or agents encounter any hazardous substance, Company shall give prompt notice of the discovery to Owner and Company may suspend performance under this Agreement until the removal or containment has been completed and approved by the appropriate governmental agency and Company. Performance obligations under this Agreement shall be extended for the delay caused by the cleanup or removal. Owner's failure to remove or contain hazardous substances shall entitle Company to terminate this Agreement without further liability by giving notice to Owner no later than ten (10) days after the date Owner notifies Company of its decision not to remove or contain. If Company terminates the Agreement under this provision, Owner shall reimburse Company for expenses incurred in removing its Equipment and terminating its Services to Subscribers and Owner. Company agrees to

indemnify Owner for any loss resulting from any hazardous materials or substances introduced into the Property by Company or its subcontractors pursuant to the terms of this Agreement.

E. **Memorandum**: Concurrent with the execution of this Agreement, Company and Owner shall execute and acknowledge a Memorandum of Agreement in the form set forth as Exhibit "G" attached hereto and incorporated herein by reference. Owner agrees that the Memorandum of Agreement may be recorded in the appropriate real estate recording office(s) of the county in which the Property is located. Upon termination of this Agreement, Company and Owner shall execute and cause to be recorded a release of the Memorandum of Agreement previously recorded. Further, Company agrees to attorn to Successor under the terms of this Agreement on a going-forward basis.

F. **Advertising**: Company and Owner may not use each other's name or the name of any affiliated company or the name of the apartment complex or use any photographs or likenesses of the Property or of Company property, personnel or assets in each other's advertising without each other's prior written consent.

G. **Consistency with Other Obligations**:

1. Company and Owner each represent and warrant to the other that:

a. This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligations enforceable in accordance with its terms;

b. No consent or approval of any other person or entity to the execution, delivery or performance of this Agreement is required; and

c. Neither the execution of this Agreement nor the performance of its obligations by it will conflict with or result in a breach of the terms, conditions or provisions of or constitute a default under any document to which it is a Party.

2. Owner additionally represents and warrants to Company that:

a. There is no pending or threatened litigation known to Owner affecting Owner's title to the Property;

b. Owner has entered into no other Telephone Service contracts covering the Property.

PART IV
Term

A. **Term**: Subject to earlier termination for default, mutual consent, or failure of Lender's Consent, this Agreement shall remain in full force and effect for SEVEN(7) years from the date of GTE record conversion to LinkIN designation for the last apartment building on the Property, and shall automatically renew for successive periods of (1) year unless either Party gives written notice of intent to terminate the Agreement at least sixty (60) days before the end of the original term of the Agreement or during any extension period.

B. **Default**: The following are "Events of Default" under this Agreement:

1. Owner or Company fails to meet, comply with, or perform any term, provision, covenant, agreement or obligation under this Agreement within the time limits and in the manner required in this

Agreement and, unless otherwise provided for in this Agreement, after written notice from the non-defaulting Party the default remains uncured for a period of thirty (30) days; provided, however, that if either Party is diligently attempting to cure the alleged default which is not reasonably able of being cured within such thirty (30) day period, the Party shall have a reasonable time to cure the default, and, for a default by Company, so long as Company is also using its best efforts to temporarily and permanently provide any failed Services to the Property, the Subscribers, and Owner;

2. The filing of a petition, case or other proceeding against a Party as a debtor under any applicable bankruptcy, reorganization or other similar laws which is not permanently dismissed or discharged within one hundred-twenty (120) days following the date of filing; or

3. Owner or Company is adjudged insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of the creditors.

C. Termination: This Agreement terminates upon the first to occur of the following:

1. Proper written notice by either Party of intent to terminate at the end of the original SEVEN (7) year period or any successive extension period;

2. The mutual written consent of the Parties hereto; or

3. An Event of Default by a Party occurs, when the other Party may terminate this Agreement by giving written notice to the defaulting Party.

D. Termination Liability: Owner acknowledges that Company will expend substantial time, resources and money in meeting its obligations under this Agreement, and that Company may only recoup its investment by providing the System and Services to the Property throughout the term of this Agreement and by collecting revenues from Subscribers. Company acknowledges that Owner's reputation with its Residents will be damaged by failure of Company to perform in accordance with the terms of this Agreement. Accordingly, the Parties agree to the following structure of termination liabilities:

1. If Company terminates this Agreement due to an Event of Default by Owner and Company is not in default during the first SEVEN (7) years of this Agreement, Owner's early termination liability will be as described in Exhibit "I". This right of Company is cumulative and does not preclude Company from seeking any other remedy available at law, including a suit for breach of contract.

2. If Owner terminates this Agreement due to an Event of Default by Company and Owner is not in default, Owner shall own the Intrabuilding System outright without any additional payment made or owed by Owner to Company. This right of Owner is cumulative and does not preclude Owner from seeking any other remedy available at law, including a suit for breach of contract.

3. The termination liabilities agreed to in this Section are not penalties, but constitute reasonable damages in the event of improper termination because damages would likely be significant and difficult to calculate with certainty.

E. Disposition Upon Termination:

1. Upon termination of this Agreement at the end of the term of the Agreement, or at the end of any extension period, Company will cooperate with Owner for a period of forty-five (45) days after such

expiration or termination. Company shall use Owner's contractor to connect the Owner and Residents (whether or not Subscribers) to the successor service provider at Owner's cost.

2. At the termination of the Agreement at the end of the SEVEN (7) year term or at the end of any period of extension, all subcontracts entered into by Company which have not previously terminated shall, at Owner's option, be assigned to Owner and assumed by Owner, and if assigned and assumed by Owner, the subcontractor shall recognize Owner as its new contracting Party, provided, Owner shall not be responsible for any liabilities or obligations of the Company arising prior to the date of such assignment and assumption. Unless assigned to and assumed by Owner, any subcontract shall terminate upon the termination of this Agreement.

F. Survival of Payment Obligations: Any payment obligation or any amount of indebtedness which has accrued prior to the date of termination and which is payable by one Party to the other shall survive the termination of this Agreement.

PART V
Miscellaneous Provisions

A. Delayed Performance: If performance under this Agreement is interfered with by acts of God, war, riot, embargo, acts of the Government in its sovereign capacity, changes requested by Owner, or any other circumstances beyond the reasonable control and without the fault of the Party affected, the affected Party, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such interference (and the other Party shall likewise be excused from its performance), provided that the Party so affected shall use reasonable efforts to remove such causes of nonperformance and both parties shall proceed whenever such causes are removed or cease.

B. Dispute Resolution:

1. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

2. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

3. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the Parties shall submit the dispute to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that

Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, and requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the agreement to arbitrate. The arbitration shall be held in Everett, Washington. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of the hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

4. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the cost of production of documents (to include search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

C. Modifications: This Agreement cannot be modified or changed except by written instruction signed by the Parties.

D. Waiver: Each Party reserves the right, from time to time, to waive enforcement of any terms and conditions of this Agreement. No waiver by a Party of any term or condition of this Agreement shall constitute a waiver by such Party of any prior, concurrent, or subsequent breach or default of the same or any other term or condition of this Agreement.

E. Assignment: This Agreement is binding upon and inures to the benefit of the Parties hereto, their successors in interest, and permitted assigns. Owner's rights and obligations under this Agreement run with the land and are assignable to any subsequent owner of the Property in accordance with this Section. Company shall have the right to assign its rights and obligations under this Agreement, or any part thereof, upon written notice to Owner and Owner's written consent. Owner's obligations and liability under this Agreement shall not terminate if Owner conveys all or part of its interest in the Property to a third party, but shall continue, concurrently with the third party's obligations and liabilities under this Agreement, unless and until a written assumption of Owner's liabilities and obligations under this Agreement is executed by the new property owner substantially in the form of Exhibit "H". Owner shall be responsible for any additional consideration sought by the new property owner for executing such an assumption. Company shall not reasonably withhold or delay its approval of an assumption agreement not substantially in the form of Exhibit "H".

F. Severability: In the event that any part of this Agreement shall be held to be indefinite, invalid or otherwise unenforceable, or in the event a change in regulations, law or tariff render any part of this Agreement invalid or unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

G. Headings: Any section, paragraph or other heading contained in the Agreement is for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

H. Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original and that all such counterparts shall constitute one and the same instrument.

I. Litigation: In any litigation to enforce, interpret or rescind the terms of this Agreement, the prevailing Party shall be entitled to recover, in addition to such other relief, all costs, including, without

limitation, reasonable attorneys' fees for services before trial, at trial and on any appeal therefrom, incurred by the prevailing Party. This Agreement includes any arbitration under the provisions of Section VB.

J. Time of Essence: Time is of the essence with respect to all obligations to be performed by either Party pursuant to this Agreement.

K. Terminology: All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, female or neuter, as the context or sense of this Agreement or any portion thereof may require, as if such words had been fully and properly written in the appropriate number and gender.

L. Notices: All notices, demands, requests and other communications required or permitted under this Agreement shall be in writing, and shall be deemed to be delivered when actually received or, if earlier, one (1) business day after delivery to a nationally recognized overnight courier service, or five (5) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage fully prepaid, addressed to the addressee at its address set forth below or at such other address as such Party may have specified therefore by notice delivered in accordance with this Section and actually received by addressee. All notices shall be sent to the following addresses unless modified in writing:

Owner:

Company: GTE Northwest Incorporated
1800 41st Street, MS - 2PM
Everett, Washington 98201
Attention: Regional Mgr, CMA

M. Run With Land: The terms and provisions of this Agreement shall run with the land until such time as it expires or is terminated.

N. Governing Law: This Agreement shall be governed by Washington law, and venue shall be in Snohomish County, Washington. The Parties consent to jurisdiction in the courts of Washington.

O. Construction of Agreement: All regulated services are provided in accordance with applicable laws, tariffs and regulations, and this Agreement shall at all times be construed to be consistent with those laws, tariffs and regulations. In the event this Agreement or any of the provisions hereof, or the operations contemplated, are found to be inconsistent with or contrary to any such law, tariff or regulation, that law, tariff or regulation shall be deemed to control and, if commercially practicable, this Agreement shall be regarded as modified accordingly and shall continue in full force and effect as so modified. If such modified Agreement is not commercially practicable in the opinion of either Party in its sole discretion, the Parties agree to meet promptly and discuss any necessary amendments or modifications to this Agreement. If the parties are unable to agree on necessary amendments or modifications in order to comply with the law, tariff or regulation, then either Party may terminate this Agreement by giving written notice to the other Party.

P. Independent Contractor: Company is an independent contractor and is not an agent or employee of, or a joint venturer or partner with, Owner.

IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have executed this Agreement to be effective as of the date first set out above.

OWNER:

:gon limited liability corporation

By: Paul Labby
Its: Member and Authorized Signatory
Date: 12/23/97

COMPANY:

GTE Northwest Incorporated, a Washington corporation

By: Eileen O'Neill Odum
Its: President
Date: 1/9/98

FORM APPROVED
T.J.O.
Attorney
Date 1/8/97

SAMPLE NOT FOR EXECUTION

AGREEMENT FOR NEW MULTI-TENANT RESIDENTIAL PROPERTIES

This Agreement is made by and between U S WEST Communications, Inc. ("U S WEST"), and Cherrywood Village LLC, ("Property Owner/Developer"), with offices for transaction of business located at 8601 SE Causey Ave Portland, Or. 97266

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

1. TERM. This Agreement shall commence on Feb 4, 2000 (the "Effective Date"), and continue for 10 years unless earlier terminated pursuant to this Agreement.

"2. SCOPE OF AGREEMENT. Property Owner /Developer agrees to: 1) endorse and promote U S WEST as the preferred supplier of local telecommunications services including internet access (U S WEST.net), and 2) the provisioning of certain U S WEST products and services for use at the property ("the Property"). In return U S WEST will provide Property Owner/Developer with certain services under terms and conditions specified in this Agreement. U S WEST's variety of services is intended to enhance the value of the Property. The tenants ("Tenants") will reside at the Property specified in Attachment 1, which by this reference is incorporated and made part of this Agreement. Attachment 1 will include the following: 1) the location of the Property(ies) covered by this Agreement, and 2) the total number of individual residential units per Property."

3. U S WEST OBLIGATIONS.

3.1. U S WEST agrees to provide the following:

a. Management and maintenance of the U S WEST facilities specified in Attachment 1.
b. Marketing and promotional support such as Caller ID, Call Waiting, U S WEST.net Services, and Voice Messaging, including; 1) Product and service collateral materials and displays, 2) U S WEST signage, and 3) Notice of special promotions and offers.
c. Preprovisioning (soft dial tone) capability in new construction (subject to network availability).
d. An assigned U S WEST account team.
e. Remittance of payment to Property Owner/Developer for costs associated with the preparation of the property ("Property"). Such payment will be in the amount of $ 300.00 (including tax) per eligible unit as specified in Attachment 1.
f. OneStep℠ Program will be included as specified in Attachment 2, which by this reference is incorporated and made part of this Agreement.

3.2. In addition, U S WEST will provide the following other services under this Agreement as indicated by check-mark below:

Check below	Property Owner/Developer selects:
☐	Price discounts on or promotions of Business Voice Messaging Service as describe in Attachment 1.
☐	Price discounts on or promotions of Enhanced FAX Services as described in Attachment 1.
☐	U S WEST will waive nonrecurring installation charge of U S WEST.net Service installed at Property/Owner Developer's leasing office(s).
☐	Property Owner/Developers will receive a discount of 50% off the then retail price on U S WEST

	supplied pagers (limit six per property specified in Attachment 1). U S WEST supplied pagers purchased by Property Owner/Developer and its Tenants shall include air time for the first thirty (30) days at no charge.
☐	U S WEST Super Savings Calling Plan for Business as described in Attachment 1.
☐	"Up to five (5) free U S WEST Advanced PCS handsets (where U S WEST Advanced PCS service is available)."

3.3. Property Owner/Developer may select one (1) of the following four (4) options:

____ A key telephone system at the Property management office. Under this option, Property Owner/Developer will receive a $3,000.00 credit per Property location covered under this Agreement toward the total retail value of a key telephone system supplied by U S WEST, and which shall be installed at each of the Property management offices.

Or

____ Up to 55 Call Waiting Identification Units. Up to 55 call waiting units will be supplied through U S WEST and are to be used at the Property. Under this option, Property Owner/Developer has the option of purchasing ten (10) or more additional units at discounted prices. U S WEST will supply collateral material for Tenants describing the services available from U S WEST.

Or

Cash Alternative (Property Owner/Developer may select one (1) of the cash alternative options listed below). This Alternative applies per Property:

____ One-time: One-time payment of $1,500,

Or

____ Any combination of cash and Venture Phone(s) to equal $1,500. (A Venture Phone value is $300)

Example:

1 Venture Phone	plus	$1,200
2 Venture Phones	plus	$ 900
3 Venture Phones	plus	$ 600
4 Venture Phones	plus	$ 300
5 Venture Phones	and	$ 0.00

4. PROPERTY OWNER/DEVELOPER OBLIGATIONS. Property Owner/Developer agrees to the following obligations:

4.1. Endorsement and promotion of U S WEST as the preferred full service provider of local telecommunications, including internet access (U S WEST.net), and vendor of choice to all of the Tenants residing at Property. Such endorsement will include, but may not be limited to, the following: 1) supplying literature, brochures and such promotional material as U S WEST may supply from time to time, 2) posting U S WEST signage, and 3) verbally endorsing U S WEST services to the Tenants.

4.2. In its Tenant leasing packet, to make specific and exclusive reference to "U S WEST" as its preferred provider of telecommunications service and include such information as U S WEST may supply on how to order new U S WEST service.

4.3. For Property specified in this Agreement, Property Owner/Developer will not endorse nor enter into another endorsement agreement with any other local telecommunications provider including but not limited

to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

4.4. To purchase for its own use U S WEST local access service and intraLATA long distance service from U S WEST during the term of this Agreement.

4.5. To provide all the necessary and adequate termination space and reusable supporting structures for telephone cable/wire within the building and on their private property as required in state and local tariffs.

4.6. Build facilities from its Demarcation Point at its expense. This Agreement will cover one-hundred (100%) percent of Property Owner/Developer's building(s) units at the locations identified in Attachment 1. Property Owner/Developer will commit a minimum number of _____ units. Construction of this minimum number of facilities shall commence within twelve (12) months of the Effective Date of this Agreement in accordance with U S WEST specifications as indicated in Attachment 1.

4.7. As soon as possible, before any Tenants move in, provide specific street addresses for each building at the Property location, the range of unit numbers in each building, the opening date of the Property leasing office, the first anticipated or scheduled Tenant move in date, the construction schedule including when each building opens or comes online, required telephone service dates, and red-lines or one-line drawings of the Property site.

5. REVIEW AND ACCEPTANCE. U S WEST may review services performed by Property Owner/Developer. U S WEST shall notify Property Owner/Developer in writing if the services do not conform to this Agreement. Property Owner/Developer shall correct such nonconforming services within thirty (30) days under this Agreement and within fifteen (15) days for services under Attachment 2, from such notification. U S WEST shall not waive any rights and remedies which U S WEST has or may have under this Agreement or under law.

6. OWNERSHIP AND PROVISIONING OF SERVICE. Title to and ownership of all U S WEST supplied equipment and facilities used up to the Property Owner/Developer's Demarcation Point, is and remains with U S WEST. U S WEST will provision and supply the Services described in this Agreement in any manner and by means of any equipment, software, and facilities U S WEST chooses. The method of provisioning of the Services is a matter within U S WEST's sole discretion.

7. CHARGES AND BILLING.

7.1. U S WEST shall pay charges due Property Owner/Developer pursuant to this Agreement according to the payment terms specified in Section 8, below.

8. PAYMENT TERMS. U S WEST's payment to Property Owner/Developer for the $ 300.00 per unit fee at the location(s) specified in Attachment 1 shall be made in two (2) installments, according to the following schedule:

8.1. A payment of 50% of the price agreed to (per each location specified in Attachment 1) will be made upon commencement of construction at the location. Property Owner/Developer will notify U S WEST of such date and provide proof of such commencement as determined by U S WEST, and U S WEST shall have thirty (30) days from the receipt of such notification in which to tender said payment.

8.2. The final payment of 50% of the price (per location specified in Attachment 1) will be made upon final acceptance by U S WEST. U S WEST's acceptance shall be based upon the location's readiness for Tenant occupancy. U S WEST shall have thirty (30) days from said acceptance to tender the final payment.

9. ADVERTISING; PUBLICITY.

9.1. Property Owner/Developer acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and U S WEST respectively, and that nothing contained in this Agreement is intended as an assignment or grant to Property Owner/Developer of any right, title or interest in the Marks. Other than U S WEST supplied material pursuant to Section 4, above, reference to or use of U S WEST's name, logo, or "Marks" in any advertising, promotional efforts or publicity ("Promotional Material") by Property Owner/Developer will be granted by U S WEST only under the following conditions:

a. Property Owner/Developer must first submit the Promotional Material to U S WEST and receive U S WEST's prior written approval.

b. The Promotional Material shall not be used in connection with any goods or services other than U S WEST services.

c. Upon termination of this Agreement, all permission to use the Promotional Material shall cease to exist and Property Owner/Developer shall either promptly return Promotional Material to U S WEST or destroy it.

9.2. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any copyrighted material, logo, trademark, trade name, or any other intellectual property right now or hereafter. U S WEST makes no warranties regarding its ownership of any rights in or the validity of the Marks.

10. CANCELLATION OF AGREEMENT FOR DEFAULT.

10.1. Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. If U S WEST terminates this Agreement for cause prior to the expiration of the term of this Agreement, Property Owner/Developer shall remit to U S WEST a termination charge of Forty Dollars ($40.00) per unit for each year remaining in the term of this Agreement. If Property Owner/Developer terminates this Agreement without cause, or if U S WEST terminates this Agreement for cause, prior to beginning construction of the minimum number of units as specified in Section 4.6, Property Owner/Developer shall remit to U S WEST all payments received from U S WEST. Cause is any material breach of the terms of this Agreement.

10.2. This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the other party is appointed for any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

11. LIMITATION OF LIABILITY.

11.1. NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING COMMERCIAL LOSS, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH DIRECTLY OR INDIRECTLY ARISES FROM THE SERVICES OR EQUIPMENT PROVIDED BY U S WEST.

11.2. EACH PARTY IS RESPONSIBLE TO THE OTHER FOR ACTUAL, PHYSICAL DAMAGES DIRECTLY CAUSED IN THE COURSE OF ITS PERFORMANCE UNDER THE AGREEMENT, BUT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH, OR TO TANGIBLE PROPERTY ARISING IN EACH CASE FROM ITS NEGLIGENT ACTS OR OMISSIONS.

12. UNCONTROLLABLE CIRCUMSTANCES. Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

13. CONFIDENTIAL INFORMATION. Property Owner/Developer may receive or have access to records and information, whether written or oral, which U S WEST considers to be confidential and proprietary, including technical information such as specifications, drawings, and technical guidelines. Such information shall be designated by U S WEST as confidential and/or proprietary, and Property Owner/Developer shall hold such confidential or proprietary information, including this Agreement, in trust and confidence for U S WEST, shall use it only for the purposes permitted hereunder, and shall deliver to U S WEST all such records and information, in written or graphic form, upon expiration or termination of this Agreement. Nothing in this section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.

14. DISPUTE RESOLUTION.

14.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA").

14.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

14.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

14.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

15. LAWFULNESS. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where the Property is located.

16. SEVERABILITY. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, and the terminated provision is not material in implementing the intentions of the parties hereto, the remainder of this Agreement shall continue in effect.

17. GENERAL PROVISIONS.

17.1. Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

17.2. In the event Property Owner/Developer transfers the Property, Property Owner/Developer shall provide U S WEST with notice of the transfer of property, as well as the name, address, and telephone number of the successor-in-interest, at least thirty (30) days prior to the transfer. Property Owner/Developer shall ensure that this Agreement is assigned to its successor-in-interest. However, if Property Owner/Developer attempts to assign this Agreement to a telecommunications company, or any parent, subsidiary, or affiliate thereof, U S WEST may terminate this Agreement, and Property Owner/Developer shall remit to U S WEST a termination charge under the formula set forth in Section 10. above. This Agreement may not be assigned to a telecommunications reseller or telecommunications carrier under any circumstances.

17.3. This Agreement constitutes the entire understanding between Property Owner/Developer and U S WEST with respect to service provided herein and supersedes any prior agreements or understandings.

17.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same agreement.

18. EXECUTION. The parties hereby execute and authorize this Agreement including any Attachment(s), Addenda or Supplements hereto, as of the latest date shown below:

	U S WEST Communications, Inc.
_____	
Signature	Signature
Name Typed or Printed	Name Typed or Printed
Title	Title
Date	Date
Address for Notices:	Address for Notices:
	U S WEST Communications, Inc. Community Developer Group Attn: Matthew Terry 5090 N 40th St., Room 270 Phoenix, AZ 85018

ATTACHMENT 1

This Attachment to the Agreement pertains to the Service(s) described below. Where terms or conditions of this Attachment 1 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 1 shall take precedence. The Agreement covers Property Owner/Developer's Property at the following locations and numbers of units: Such Property location must be within U S WEST's serving area.

Property Locations (s)	# of Units	Construction Start Date
Total Number of Units		

Business Voice Messaging Service offer:

Property Owner/Developers selecting this offer will receive one (1) mailbox **at no charge** per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Property Owner/Developer will also receive optional features selected at no charge, as shown below.

Service	Regular Price		Special Offer
	Monthly	Installation	
Mailbox	$12.75	$10.00	**NO CHARGE**
Extension Mailbox Feature	$5.00	$10.00	**NO CHARGE***
Message Notification Feature	$3.00	$10.00	**NO CHARGE***
Scheduled Greeting Feature	$3.00	$10.00	**NO CHARGE***

***NOTE:** Extension Mailbox Feature and Scheduled Greeting feature are not available on the same line.

Enhanced FAX Service offer:

Property Owner/Developers selecting this offer will receive U S WEST Enhanced FAX Services **at no charge** for nonrecurring and monthly recurring charges per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Except as noted below, applicable usage charges will apply. Usage credit available through this Special Offer will be applied and any remaining credit balance from the Special Offer will be carried forward.

Service	Regular Price		Special Offer
	Monthly	Installation	
Broadcast FAX or FAX Mail Plus	$12.95 $15.95	$25.00	**NO CHARGE** one-time $20.00 usage credit towards first broadcast
FAX Request Price Plans B & C	$12.95	$25.00	**NO CHARGE** one-time $20.00 usage credit towards per-page charge
FAX Request Price Plans D & E	$25.00	$25.00	**NO CHARGE** one-time $20.00 usage credit towards per-page charge
Never-Busy FAX	$12.95	$10.00	**NO CHARGE**

SAMPLE NOT FOR EXECUTION

Super Savings Calling Plan for Business offer:

Property Owner/Developers selecting this offer will receive the U S WEST Super Savings Calling Plan for all local long distance calls for the Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region).

SAMPLE NOT FOR EXECUTION

SAMPLE NOT FOR EXECUTION

ATTACHMENT 2

This Attachment 2 to the Agreement pertains to the service(s) described below. In addition to those stated herein, all terms and conditions of the Agreement shall apply. Where terms or conditions of this Attachment 2 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 2 shall take precedence.

PROPERTY OWNER/DEVELOPER MARKETING SALES THROUGH ONESTEP SM PROGRAM

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

1. **SCOPE OF AGREEMENT.** U S WEST is a provider of telecommunications service ("Services"). Property Owner/Developer is in a business that allows it to take orders for U S WEST Services from Tenants moving into the Property covered by this Attachment 2 using the U S WEST OneStep℠ Program ("OneStep℠" or "Program"). The Program allows the Tenants to request U S WEST Services through the Property Owner/Developer without a call to the U S WEST business office. Property Owner/Developer will not promote, sell or offer Services identified in this Agreement that are supplied by a provider of such service other than U S WEST. The locations of the Properties covered by this Attachment 2 are as specified in Exhibit 1. In return for each completed sale through the OneStep℠ Program, U S WEST will compensate Property Owner/Developer according to the compensation schedule specified in Exhibit 1, incorporated and made part of this Attachment 2 by this reference. This Attachment 2 sets forth the parties obligations relating to the OneStep℠ Program and such additional terms and conditions as may apply and the parties performance relating to this Attachment 2.

2. **APPOINTMENT OF PROPERTY OWNER/DEVELOPER.** U S WEST hereby appoints Property Owner/Developer as its non-exclusive limited agent to sell U S WEST Services and perform responsibilities specified herein under the terms and conditions contained in this Attachment 2. During the term of this Attachment 2 and thereafter, U S WEST reserves the right, without obligation or liability to Property Owner/Developer, to market its Services, whether through its own representatives, other agents, or by any other means. Property Owner/Developer hereby accepts such appointment and certifies that, except as specifically provided for herein, it is capable of performing all of its obligations under this Attachment 2. Property Owner/Developer shall perform the duties specified herein only in relation to Services covered by this Attachment 2 and set forth in Exhibit 1. U S WEST may, from time to time, modify Exhibit 1 by providing thirty (30) days written notice. Property Owner/Developer is authorized to perform the responsibilities covered by this Attachment only at the locations specified herein. It is expressly understood and agreed that the agency created herein is a limited agency, and that Property Owner/Developer shall have only those rights and responsibilities specifically described in this Attachment 2 for Default. U S WEST may, at its sole discretion, with fifteen (15) days prior written notice, suspend or terminate this Attachment 2 if Property Owner/Developer's activities do not satisfy U S WEST's professional or ethical standards, or if U S WEST has reasonable suspicion that Property Owner/Developer or any of Property Owner/Developer's leasing personnel have not fully complied with performance required under this Attachment 2.

3. **COMPENSATION.** Compensation for the services performed by Property Owner/Developer hereunder shall be as specified in Exhibit 1. The compensation agreed to herein shall be the total compensation due to Property Owner/Developer under this Attachment 2 and will by paid only in accordance with the terms of this Attachment 2. U S WEST will provide, within twenty (20) business days after the end of each month, a list of the Completed Orders ("Completed Orders"), as defined herein, and the products sold on those orders, as well as the total compensation for all orders and products. U S WEST will render no more than one (1) compensation check to Property Owner/Developer each month, regardless of the number of Properties listed under this Attachment 2 or managed by the Property Owner/Developer.

SAMPLE NOT FOR EXECUTION

4. PROPERTY OWNER/DEVELOPER OBLIGATIONS.

4.1. Property Owner/Developer shall market, promote, solicit, and take orders for U S WEST Services for their new Tenants on behalf of U S WEST. Property Owner/Developer shall be available and responsive to questions regarding U S WEST Services from its Tenants during its normal business hours.

4.2. Property Owner/Developer shall display signage indicating availability of U S WEST Services through the OneStep℠ process. In addition, Property Owner/Developer will, at its own expense, provide, own, and maintain a fax machine to send OneStep℠ service orders directly to the U S WEST Client Service Center and maintain a sufficient supply of forms, collateral materials, price lists, etc. Property Owner/Developer shall provide U S WEST at least three (3) weeks lead time in order to replenish supplies its orders for such forms and collateral. For all Properties covered under this Attachment, U S WEST will mail all such forms and collateral to Property Owner/Developer at the following address:

_____

_____

4.3. Prior to taking orders for Services, Property Owner/Developer shall attend the training necessary to use U S WEST order forms. Property Owner/Developer will ensure that it will train its leasing staff and provide any updates to training on a timely basis. Property Owner/Developer shall ensure that all service orders sent to the U S WEST Client Service Center facsimile number are substantially error free. For Tenant questions that Property Owner/Developer personnel cannot answer and for information on the services of U S WEST that are not included in Exhibit 1, Property Owner/Developer shall assist the Tenant in contacting U S WEST's offices.

4.4. Property Owner/Developer shall ensure that orders for Services taken by its personnel are solely at the OneStep℠ prices and terms specified by U S WEST. Such prices, terms, and conditions are subject to change at the sole discretion of U S WEST and are effective upon written notice to Property Owner/Developer. Property Owner/Developer shall ensure that its personnel use the most current U S WEST prices, terms, and forms when taking orders for network services. Property Owner/Developer is not authorized to alter, orally or in writing, any U S WEST price, term, or condition on any U S WEST form. Property Owner/Developer shall not make any representations or warranties concerning this Program or network services, or impose any conditions, directly or indirectly, other than those expressly authorized by U S WEST.

4.5. U S WEST, at its sole discretion, can accept or reject any order. No order shall be final until U S WEST accepts such orders. Property Owner/Developer shall have no authority to approve or accept any orders on behalf of U S WEST. All orders obtained by Property Owner/Developer shall be promptly forwarded to U S WEST for acceptance, rejection, or comment. U S WEST reserves the right to cancel or terminate any order, or to permit the Tenant to cancel or terminate any order, in whole or in part, at U S WEST's sole discretion.

4.6. U S WEST has sole authority to determine which U S WEST products or services are offered through the OneStep℠ process. U S WEST reserves the right to add, delete, or change any portion of U S WEST's Services offered through OneStep℠.

4.7. For Property specified in this Attachment 2, Property Owner/Developer will not act as an agent for, or enter into another agency agreement with, any other local or intraLATA telecommunications provider or reseller, including but not limited to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

4.8. If Property Owner/Developer pays compensation to its Property management personnel, Property Owner/Developer shall determine, establish, administer and distribute any such compensation that it may remit to such Property management personnel.

5. U S WEST OBLIGATIONS.

5.1. U S WEST will provide the Property Owner/Developer with sufficient quantities of the OneStep℠ forms, collateral materials, signage indicating availability of OneStep℠ Program, price sheet and U S WEST Disclosure Statement forms.

5.2. U S WEST will provide initial training to Property Owner/Developer at a single location to be mutually agreed upon. Any additional training will be conducted by Property Owner/Developer to its leasing staff pursuant to Section 5.3. of this Attachment Training will include in-depth detailed instructions pertaining to the OneStep℠ service order forms and process and product/price information regarding Services available through the OneStep℠ program.

5.3. U S WEST will initially provide up to thirty (30) training manuals to Property Owner/Developer. If additional manuals are required during the term of this Agreement, U S WEST hereby grants permission to and Property Owner/Developer hereby agrees to make copies of said training materials for its own use and at its own expense.

6. INSURANCE AND INDEMNITY. Without limiting in any way the indemnification obligations set forth herein, the parties shall each maintain, at their own expense, workers' compensation insurance to provide protection against claims under applicable workers' compensation laws and employer's liability. Additionally, commercial general liability insurance, including contractual liability coverage for insurable obligations assumed hereunder, and personal injury coverage shall be maintained. Such insurance shall provide protection against claims and liability including, but not limited to, claims for bodily injury or property damage, which may arise or result from the activities as set forth herein. At U S WEST's request, Property Owner/Developer shall furnish satisfactory proof of insurance coverage. Each party to this Agreement hereby agrees to defend, indemnify, and hold harmless the other party and its affiliated companies, and their directors, officers, employees, agent, successors, and assigns, from and against any liabilities, claims, costs, losses, and expenses, including attorney fees, incident to or resulting from its negligent acts and omissions related to this Agreement. In no event will U S WEST be held liable for incidental, special, or consequential damages to anyone arising out of this Attachment 2.

7. CONFIDENTIAL INFORMATION. Property Owner/Developer may receive or have access to records and information, whether written or oral, which U S WEST considers to be confidential and proprietary, including but not limited to U S WEST customer information and information which relates to U S WEST's present and future development of business activities. Property Owner/Developer shall hold such confidential and/or proprietary information in trust and confidence for U S WEST, and shall use it only for the purposes permitted hereunder. Nothing in this Section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.

8. CANCELLATION OF AGREEMENT FOR DEFAULT.

8.1. Either party may terminate this Attachment 2 for cause, provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Attachment 2.

8.2. This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the other party is appointed for

any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

EXHIBIT 1

Property Location(s):

U S WEST OneStep℠ Compensation Schedule. U S WEST will compensate the Property Owner/Developer according to the following schedule for Completed Orders:

COMPLETED ORDERS:	COMPENSATION PER LINE	MINIMUM # OF MONTHS IN SERVICE
New Connect and T Orders	$9.00	3
Packages:		
CustomChoice™ (Compensation includes $9.00 per order compensation)	$29.00	3
ValueChoice (Compensation includes $9.00 per order compensation)	$24.00	3
Features:		
U S WEST Call Waiting	$8.00	3
U S WEST Caller ID	$8.00	3
U S WEST Caller ID with Privacy +	$8.00	3
U S WEST No Solicitation	$8.00	3
U S WEST Voice Messaging	$8.00	3
U S WEST Custom Ringing	$4.00	3
U S WEST Three Way Calling	$4.00	3
U S WEST Call Forwarding	$4.00	3
U S WEST Continuous Redial	$4.00	3
U S WEST Last Call Return	$4.00	3
U S WEST Call Rejection	$4.00	3
U S WEST Priority Call	$4.00	3
U S WEST Additional Line	$15.00	3
U S WEST Speed Dialing	$4.00	3
U S WEST Listings	$2.00	N/A
U S WEST LineBacker Services	$2.00	3
U S WEST Calling Card	$1.00	N/A
U S WEST Paging	$8.00	3
U S WEST.net Internet Access (where available)	$8.00	3
U S WEST Local Long Distance Calling Plans (where available)	$8.00	3

Compensation will be paid one (1) month in arrears of U S WEST Service provisioning. Compensation will also be paid for features sold to existing U S WEST customers. However, no other compensation (i.e., order fee) will be included in these instances. U S WEST will check the product and service retention at the end of ninety (90) days to determine the number of features dropped. Any lines or features not in place ninety (90) days after Service was ordered will be deducted from the current month's compensation calculation. Upon termination or expiration of this Attachment 2 by either party, U S WEST will withhold compensation for one hundred twenty (120) days to allow for a "truing up" period. Final compensation payments will be rendered upon completion of the one hundred twenty (120) day period.

CERTIFICATE OF SERVICE

I hereby certify that an original and five copies of the above and foregoing **LATE-FILED STATUS REPORT ON ISSUE 3-4 AND REVISED STATEMENT OF QWEST POSITION REGARDING ISSUE 3-14** was hand delivered this 12th day of September, 2000, to the following:

Mr. Bruce N. Smith
Colorado Public Utilities Commission
Executive Secretary
1580 Logan St., Office Level 2
Denver, CO 80203

and a copy has been hand delivered on the following:

**Joseph Molloy
Colorado Public Utilities Commission
1580 Logan St., OL-2
Denver, CO 80203

**Mana Jennings-Fader
Assistant Attorney General
1525 Sherman St., 5th Floor
Denver, CO 80203

and a copy was served electronically to each person on the e-mail distribution list for this docket.

_____