

ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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MIKE GLEASON
Chairman

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WILLIAM MUNDELL
Commissioner

AZ CORP COMMISSION
DOCKET CONTROL

JEFF HATCH-MILLER
Commissioner

Arizona Corporation Commission
DOCKETED

KRISTIN MAYES
Commissioner

DEC 19 2008

GARY PIERCE
Commissioner

DOCKETED BY *MM*

IN THE MATTER OF THE STAFF'S
REQUEST FOR APPROVAL OF
COMMERCIAL LINE SHARING
AGREEMENT BETWEEN QWEST
CORPORATION AND COVAD
COMMUNICATIONS COMPANY

DOCKET NOS. T-03632A-04-0603
T-01051B-04-0603

NOTICE OF FILING

By this Notice of Filing, Qwest Corporation ("Qwest") notifies the Commission that the Commercial Line Sharing Agreement (the "Arrangements Agreement") that is the subject of this docket, and which is referred to in the recommended Order Denying Motion to Dismiss filed in the Docket by the Hearing Division on December 2, 2008, has expired or otherwise terminated. A new agreement, captioned "Qwest Commercial Line Sharing Agreement" has been entered into between Qwest and Dieca Communications, Inc. dba Covad Communications Company ("Covad"). A copy of that new agreement is attached hereto. Qwest is providing this agreement for informational purposes only and, in so doing, expressly reserves and does not waive its position that the Commission does not have jurisdiction over the agreement under either federal or state law.

The new agreement is substantially similar to the former Arrangements Agreement in respects material to this docket. Much of the language is identical, the principal differences

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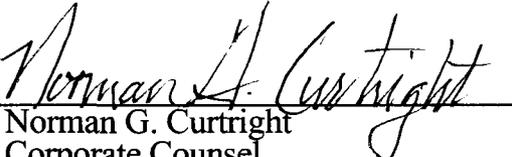
1 being only the rearrangement of the terms in the new agreement.

2 Qwest notes that there were two other Commercial Line Sharing Agreements that were
3 transmitted to the Commission Staff, one with New Edge, transmitted to the Staff on or about
4 December 15, 2004, and the other with MCI, transmitted to the Staff on or about February 14,
5 2005. As was the case with the transmittal of the Arrangements Agreement with Covad, Qwest
6 transmitted the agreements with New Edge and MCI for informational purposes only, and
7 expressly did not request Commission review under Section 252 of the Act or under state law.
8 Those agreements with New Edge and MCI have since expired and no new line sharing
9 agreements have been entered. The only current line sharing agreement Qwest has in effect in
10 Arizona is the one that is attached to this Notice of Filing.

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RESPECTFULLY SUBMITTED this 19th day of December, 2008.

QWEST CORPORATION

By: 
Norman G. Curtright
Corporate Counsel
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012
Telephone: (602) 630-2187

1 Original and 13 copies of the foregoing
2 were filed this 19th day of December, 2008 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7
8 Copies of the foregoing hand-delivered/mailed/emailed
9 this 19th day of December, 2008 to:

10 Jane Rodda, Administrative Law Judge
11 Hearing Division
12 ARIZONA CORPORATION COMMISSION
13 1200 W. Washington
14 Phoenix, AZ 85007
15 jrodda@cc.state.az.us

16 Dwight D. Nodes
17 Assistant Chief Administrative
18 Law Judge
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, AZ 85007
22 dnodes@cc.state.az.us

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25 Arizona Corporation Commission
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5 Suite 800
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7 mpatten@rdp-law.com

8 Jason Wakefield
9 Covad Communications Company
10 110 Rio Robles
11 San Jose, CA 95134
12 jwakefie@covad.com

13
14 *Diane Kyparis*
15 _____
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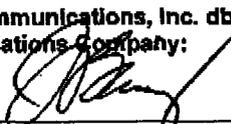
QWEST COMMERCIAL LINE SHARING AGREEMENT

This Qwest Commercial Line Sharing Agreement, together with the Attachments and Exhibits, incorporated herein by reference, ("Agreement") is between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. dba Covad Communications Company ("CLEC"), a Virginia corporation, (each identified for purposes of this Agreement in the signature blocks below, and referred to separately as a "Party" or collectively as the "Parties"). The undersigned Parties have read and agree to the terms and conditions set forth in the Agreement.

Qwest Corporation:

By: 
 Name: L. T. Christensen
 Title: Director - Wholesale Contracts
 Date: 12/11/08

DIECA Communications, Inc. dba Covad Communications Company:

By: 
 Name: Jeff Bailey
 Title: EVP & CFO
 Date: 12/10/08

NOTICE INFORMATION: All written notices required under the Agreement will be sent to the following:

Qwest Corporation
 Director - Interconnection Agreements
 1801 California Street, 24th Floor
 Denver, CO 80202
 Phone: 303-965-3029
 Fax: 303-965-3527
 Email: intagree@qwest.com

With copy to:
 Qwest Law Department
 Associate General Counsel, Interconnection
 1801 California Street, 10th Floor
 Denver, CO 80202
 Phone: 303-383-6553
 Email: Legal.Interconnection@qwest.com

CLEC:
 Jason Wakefield
 Vice-President, Government & External Affairs
 Covad Communications Company
 110 Rio Robles
 San Jose, CA 95134-1813
 408-952-7440
 408-952-7539 (f)
jwakefie@covad.com

APPLICABLE STATES:

Qwest agrees to offer and CLEC intends to purchase commercial line sharing arrangements ("Service" or "Commercial Line Sharing") in the states indicated below by CLEC's signatory initialing (or an "X") on the applicable blanks. **Note: If CLEC chooses to indicate Washington, CLEC must select only one (1) of the Washington Service offerings. CLEC may not change its Washington selection after the Agreement is executed.**

- Arizona
- Colorado
- Idaho
- Iowa
- Minnesota
- Montana
- Nebraska
- New Mexico
- North Dakota
- Oregon
- South Dakota
- Utah

- Washington 2.1.6.1** (with Commercial Performance Measures and Reporting, Performance Targets and Service Credits, as described in Section 2.1.6.1 of Attachment 2 to this Agreement); or
- Washington 2.1.6.2** (with Service Performance Measures and Reporting and Performance Assurance Plan (PID/PAP) for Washington only, as described in Section 2.1.6.2 of Attachment 2 to this Agreement).
- Wyoming

QWEST COMMERCIAL LINE SHARING AGREEMENT

1. **Definitions.** Capitalized terms used herein are defined in Attachment 1 or where they appear in the Agreement.

2. **Effective Date.** This Agreement is effective upon the latest execution date by the Parties ("Effective Date").

3. **Term.**

3.1 The term of this Agreement begins on the Effective Date and continues through December 31, 2010.

3.2 Upon expiration of the term of this Agreement, this Agreement will continue in full force and effect until superseded by a successor agreement in accordance with this Section or until notice of termination is given pursuant to Section 3.3 below.

3.3 A Party must provide 90 days written notice to terminate the Services under the Agreement upon or after expiration. Prior to expiration, a Party may terminate this Agreement only for cause and must provide 90 days' written notice to terminate the services under the Agreement. After receiving notice of expiration or termination, CLEC shall convert all Services to a line splitting arrangement, to a stand-alone unbundled loop, or to such other arrangement as CLEC may have negotiated with Qwest to replace such Service. Qwest and CLEC will work cooperatively to develop a schedule for this transition. Notwithstanding the foregoing, if CLEC fails to convert the Services after the 90 day notice period, Qwest may refuse any new Service orders or, at its sole option, disconnect the Services or immediately charge CLEC for the applicable unbundled loop rate contained in a tariff or interconnection agreement then in effect.

3.4 Qwest's deployment of Remote-Based DSL may cause interference or degradation in CLEC's provision of service to CLEC's End User Customers, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417. The parties will not consider such service interference or degradation to be a termination of Services by Qwest, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417.

4. **Scope of Agreement; Service Provisioning; Controlling Documents; Change of Law; Eligibility for Services under this Agreement; Non-Applicability of Change Management Process.**

4.1 The Services described in this Agreement will only be provided in Qwest's incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

4.2 In the event of a conflict in any term of any documents that govern the provision of Services hereunder, the following order of precedence will apply in descending order of control: an Attachment, an Exhibit, this Agreement, and any Order Form. The Parties agree that the Services offered and purchased under this Agreement are subject to compliance with all Applicable Laws and regulations; and obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to Federal rules, regulations, and laws, as of the Effective Date ("Existing Rules"). Nothing in this Agreement will be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement will preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or

effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified.

4.4 To receive Services under this Agreement, CLEC must be a certified CLEC under applicable state rules. CLEC may not purchase or utilize Services covered under this Agreement for its own administrative use or for the use by an Affiliate.

4.5 Except as otherwise provided in this Agreement, the Parties agree that Services provided under this Agreement are not subject to the Qwest Wholesale Change Management Process ("CMP"), Qwest's Performance Indicators ("PID"), Performance Assurance Plan ("PAP"), or any other wholesale service quality standards, or liquidated damages and remedies. Except as otherwise provided, CLEC hereby waives any rights it may have under the PID, PAP and all other wholesale service quality standards to liquidated damages, and remedies with respect to Services provided pursuant to this Agreement. CLEC proposed changes to Service attributes and process enhancements will be communicated through the standard account interfaces. Change requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

5. **CLEC Information.** CLEC agrees to work with Qwest in good faith to complete promptly or update, as applicable, Qwest's "New Customer Questionnaire" to the extent that CLEC has not already done so, and CLEC will hold Qwest harmless for any damages to or claims from CLEC caused by CLEC's failure to complete or update the questionnaire.

6. **Financial Terms.**

6.1 The description of the Service is set forth in Attachment 2 attached to this Agreement and the applicable rates are set forth in Exhibit A attached to this Agreement. The Parties agree that the referenced rates are just and reasonable.

6.2 **Taxes, Fees, and other Governmental Impositions.**

All charges for Services provided herein are exclusive of any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges ("Tax" or "Taxes"). Taxes resulting from the performance of this Agreement will be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such Taxes is placed upon the other Party. However, where the selling Party is specifically permitted by an Applicable Law to collect such Taxes from the purchasing Party, such Taxes will be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Taxes will be billed as a separate item on the invoice in accordance with Applicable Law. The Party Billing such Taxes will, at the written request of the Party billed, provide the billed Party with detailed information regarding billed Taxes, including the applicable Tax jurisdiction, rate, and base upon which the Tax is applied. If either Party ("Contesting Party") contests the application of any Tax collected by the other Party ("Collecting Party"), the Collecting Party will reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any reasonable costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party has paid the Tax contested. If the purchasing Party provides the selling Party with a resale or other exemption certificate, the selling Party will exempt the purchasing Party if the selling Party accepts the certificate in good faith. If a Party becomes aware that any Tax is incorrectly or erroneously collected by that Party from the other Party or paid by the other Party to that Party, that Party will refund the incorrectly or erroneously collected Tax or paid Tax to the other Party.

6.3 Each Party will be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and

QWEST COMMERCIAL LINE SHARING AGREEMENT

will be responsible for any related tax filings, payment, protest, audit and litigation. Each Party will be solely responsible for the Billing, collection and proper remittance of all applicable Taxes relating to its own services provided to its own Customers.

7. Intellectual Property.

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive Service solely as provided in this Agreement or as specifically required by the then-applicable federal rules and regulations relating to Services provided under this Agreement, nothing contained within this Agreement will be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trademark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, trade name, trademark, service mark, trade secret, nor other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party without execution of a separate written agreement between the Parties.

7.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) will indemnify and hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. The obligation for indemnification recited in this paragraph will not extend to infringement which results from:

A. any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or is not reasonably necessary to CLEC's use of the Services offered by Qwest under this Agreement; or

B. any modification made to the facilities or services of the Indemnifying Party by, on behalf of, or at the request of the Indemnified Party and not required by the Indemnifying Party.

7.3 In the event of any claim, the Indemnifying Party may, at its sole option obtain the right for the Indemnified Party to continue to use the facility or service; or replace or modify the facility or service to make such facility or service non-infringing.

7.4 If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided above and either the facility or service is held to be infringing by a court of competent jurisdiction; or the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party will notify the Indemnified Party and the Parties will negotiate in good faith regarding reasonable modifications to this Agreement necessary to mitigate damage or comply with an injunction which may result from such infringement; or allow cessation of further infringement.

7.5 The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request will not be unreasonably denied.

7.6 To the extent required under applicable federal and state law, Qwest will use commercially reasonable efforts to obtain, from its

vendors who have licensed intellectual property rights to Qwest in connection with Services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such Services as contemplated hereunder and at least in the same manner used by Qwest for the Services provided hereunder. Qwest will notify CLEC immediately in the event that Qwest believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection will be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 7.2, preceding.

7.7 Neither Party will without the express written permission of the other Party, state or imply that it is connected, or in any way affiliated with the other or its Affiliates; it is part of a joint business association or any similar arrangement with the other or its Affiliates; the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or with respect to its marketing, advertising or promotional activities or materials, the services are in any way associated with or originated from the other Party or any of its Affiliates.

7.8 Nothing in this Section prevents either Party from truthfully describing the Services it uses to provide service to its End User Customers, provided it does not represent the Services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates.

7.9 Because a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

8. Financial Responsibility, Payment and Security.

8.1 Payment Obligation. Amounts payable under this Agreement are due and payable within 30 Days after the date of invoice ("Payment Due Date"). If the Payment Due Date falls on a Sunday or on a holiday which is observed on a Monday, the payment date will be the first non holiday day following such Sunday or holiday. If such a payment date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date will be the last non holiday day preceding such Saturday or holiday. For invoices distributed electronically, the date of the invoice date is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If CLEC fails to make payment on or before the Payment Due Date, Qwest may invoke all available rights and remedies.

8.2 Cessation of Order Processing. Qwest may discontinue processing orders for Services for the failure of CLEC to make full payment for Services, less any good faith disputed amount as provided for in this Agreement, within 30 Days following the Payment Due Date provided that Qwest has first notified CLEC in writing at least 10 business days prior to discontinuing the processing of orders for Services. If Qwest does not refuse to accept additional orders for Services on the date specified in the 10 business days notice, and CLEC's non-compliance continues, nothing contained herein will preclude Qwest's right to refuse to accept additional orders for Services from CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past-due charges for Services not disputed in good faith under this Agreement, and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, Qwest reserves the right to seek equitable relief including injunctive relief and specific performance.

8.3 Disconnection. Qwest may disconnect any Services provided under this Agreement for failure by CLEC to make full payment for such Services, less any good faith disputed amount as

QWEST COMMERCIAL LINE SHARING AGREEMENT

provided for in this Agreement, within 60 Days following the Payment Due Date provided that Qwest has first notified CLEC in writing at least 10 business days prior to disconnecting Services. CLEC will pay the applicable charge required to reconnect Services for each End User Customer disconnected pursuant to this paragraph. In case of such disconnection, all applicable undisputed charges, including termination charges, will become due. If Qwest does not disconnect CLEC's Service on the date specified in the 10 business days notice, and CLEC's noncompliance continues, nothing contained herein will preclude Qwest's right to disconnect any or all Services. For reconnection of the Service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for Services and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Qwest will not effect a disconnection pursuant to this section in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

8.4 Billing Disputes. Should CLEC dispute, in good faith, and withhold payment on any portion of the charges under this Agreement, CLEC will notify Qwest in writing within 15 Days following the Payment Due Date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC will pay all undisputed amounts due to Qwest. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide reasonably requested documentation regarding the amount disputed, and work in good faith in an effort to resolve and settle the dispute through informal means prior to invoking any other rights or remedies.

A. If CLEC disputes charges and does not pay such charges by the Payment Due Date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of Qwest, CLEC will pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. CLEC may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of CLEC, Qwest will credit CLEC's bill for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute.

B. If CLEC pays the disputed charges and the dispute is resolved in favor of Qwest, no further action is required. If CLEC pays the charges disputed at the time of payment or at any time thereafter, and the dispute is resolved in favor of the CLEC, Qwest will adjust the Billing, usually within two Billing cycles after the resolution of the dispute, as follows: Qwest will credit the CLEC's bill for the disputed amount and any associated interest; or if the disputed amount is greater than the bill to be credited, pay the remaining amount to CLEC.

C. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, will any late payment charges be assessed on any previously assessed late payment charges.

D. If CLEC fails to dispute a rate or charge within 60 Days following the invoice date on which the rate or charge appeared, adjustment will be made on a going-forward basis only, beginning with the date of the dispute.

8.5 Security Deposits. In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of the Agreement, Qwest may request a security deposit. A "material adverse change in financial condition" means CLEC is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with Qwest, or the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by Qwest due to a previous failure to pay undisputed charges in a timely manner. Qwest may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly Delinquent" means any payment of a material amount of total monthly Billing under the Agreement received after the Payment Due Date, three or more times during the last 12 month period. The deposit may not exceed the estimated total monthly charges for a two month period based upon recent Billing. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by CLEC's actual monthly average charges, payment history under this Agreement, or other relevant factors, but in no event will the security deposit exceed \$5,000,000. Required deposits are due and payable within 30 Days after demand and non-payment is subject to 8.2 and 8.3 of this Section.

8.6 Interest on Deposits. Any interest earned on cash deposits will be credited to CLEC in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits are not subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request, and Qwest will consider, a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

8.7 Late Payment Charge. If any portion of the payment is received by Qwest after the Payment Due Date, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment charge will be due to Qwest. The late payment charge is the portion of the payment not received by the Payment Due Date multiplied by a late factor. The late factor is the lesser of the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest; or 0.000407 per Day, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest.

9. Conversions. If CLEC is obtaining services from Qwest under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to a Service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein will be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

10. Customer Contacts. CLEC, or CLEC's authorized agent, are the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking,

QWEST COMMERCIAL LINE SHARING AGREEMENT

Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC will inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party will make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement will be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party.

10.1 In the event Qwest terminates Service to CLEC for any reason, CLEC will provide any and all necessary notice to its End User Customers of the termination. In no case will Qwest be responsible for providing such notice to CLEC's End User Customers.

11. **Default and Breach.** If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement and such default or violation continues for 30 Days after written notice thereof, the other Party may terminate this Agreement and seek relief in accordance with the Dispute Resolution provision, or any remedy under this Agreement.

12. Limitation of Liability.

12.1 CLEC's exclusive remedies for claims under this Agreement are limited to CLEC's proven direct damages unless CLEC's damages are otherwise limited by this Agreement to outage credits or other service credits, in which case Qwest's total liability will not exceed the aggregate amount of any applicable credits due.

12.2 Except for indemnification and payment obligations under this Agreement, neither Party will be liable to the other for indirect, incidental, consequential, exemplary, punitive, or special damages, including, without limitation, damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including, without limitation, negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

12.3 Nothing contained in this Section will limit either Party's liability to the other for willful misconduct, provided that, a Party's liability to the other Party pursuant to the foregoing exclusion, other than direct damages, will be limited to a total cap equal to 100% of the annualized run rate of total amounts charged by Qwest to CLEC under the Agreement.

12.4 Qwest will incur no liability to CLEC for any interference with or degradation to CLEC's service to CLEC's End User Customers caused by Qwest's deployment of Remote-Based DSL, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417.

13. Indemnity.

13.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

A. Each Party ("Indemnifying Party") agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses

(including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

B. In the case of claims or loss alleged or incurred by an End User Customer of either Party arising out of or in connection with Services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (i.e., the Indemnifying Party) will defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively, "Indemnified Party") against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying Service was provided or was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's End User Customers will not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.

13.2 The indemnification provided herein is conditioned upon:

A. The Indemnified Party will promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the indemnifying Party's ability to defend such claim.

B. If the Indemnifying Party wishes to defend against such action, it will give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party has sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party has the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party will be available to the other Party with respect to any such defense.

C. In no event will the Indemnifying Party settle or consent to any judgment for relief other than monetary damages pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

14. Limited Warranties.

14.1 Each Party will provide suitably qualified personnel to perform this Agreement and all Services hereunder in a good and

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workmanlike manner and in material conformance with all Applicable Laws and regulations.

14.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, QWEST SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER. QWEST SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

15. **Relationship.** Except to the limited extent expressly provided in this Agreement neither Party has the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other or otherwise act on the other's behalf; and the relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship, or franchise.

16. **Assignment.**

16.1 CLEC may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Qwest, which consent will not be unreasonably withheld. Notwithstanding the foregoing and subject to the prior credit review, submission of appropriate legal documentation (including, but not limited, to any appropriate Secretary of State or other filings or documents specified by Qwest and approval by Qwest of CLEC's proposed assignee, CLEC may assign this Agreement without prior written consent of Qwest to any Affiliate, successor through merger, or acquirer of substantially all of its assets; and Qwest may assign this Agreement without prior written consent to any Affiliate, successor through merger, or acquirer of substantially all of its business assets; provided that in all cases the assignee of CLEC or Qwest, as applicable, acknowledge in writing its assumption of the obligations of the assignor hereunder. Any attempted assignment in violation hereof is of no force or effect and is void. Without limiting the generality of the foregoing, this Agreement will be binding the Parties' respective successors and assigns.

16.2 In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through Services provided by Qwest under this Agreement, Qwest will ensure that the transferee serve as a successor to and fully perform all of Qwest's responsibilities and obligations under this Agreement for a period of 90 Days from the effective date of such transfer or until such later time as the FCC may direct pursuant to the FCC's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest will use best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Qwest's obligations after the above-stated transition period pursuant to the terms of this Agreement.

17. **Reporting Requirements.** If reporting obligations or requirements are imposed upon either Party by any third party or regulatory agency in connection with either this Agreement or the Services, including use of the Services by CLEC or its End Users, the other Party agrees to assist that Party in complying with such obligations and requirements, as reasonably required by that Party.

18. **Survival.** The expiration or termination of this Agreement does not relieve either Party of those obligations that by their nature are intended to survive.

19. **Confidentiality/ Nondisclosure.**

19.1 Neither Party will, without the prior written consent of the other Party issue any public announcement regarding, or make any other disclosure of the terms of, this Agreement; or disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other Party. Consent may only be given on behalf of a Party by its Legal Department. However, a Party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the disclosing Party gives the non-disclosing Party reasonable prior written notice. Notwithstanding the foregoing, if reporting or filing obligations or requirements are imposed upon Qwest by any third party or regulatory agency in connection with this Agreement, CLEC agrees to assist Qwest in complying with such obligations and requirements, as reasonably required by Qwest and to hold Qwest harmless for any failure by CLEC in this regard. Qwest's compliance with any regulatory filing obligation will not constitute a violation of this section.

19.2 All Confidential Information will remain the property of the disclosing Party. A Party who receives Confidential Information via an oral communication may request written confirmation that the material is Confidential Information. A Party who delivers Confidential Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Confidential Information. Each Party has the right to correct an inadvertent failure to identify information as Confidential Information by giving written notification within 30 Days after the information is disclosed. The receiving Party will from that time forward, treat such information as Confidential Information.

19.3 Upon request by the disclosing Party, the receiving Party will return all tangible copies of Confidential Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

19.4 Each Party will keep all of the other Party's Confidential Information confidential and will disclose it on a need to know basis only. Each Party will use the other Party's Confidential Information only in connection with this Agreement and in accordance with Applicable Law. Neither Party will use the other Party's Confidential Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. If either Party loses, or makes an unauthorized disclosure of, the other Party's Confidential Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

19.5 **Effective Date of this Section.** Notwithstanding any other provision of this Agreement, the Confidential Information provisions of this Agreement apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

19.6 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party is entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies are not the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but are in addition to all other remedies available at law or in equity.

19.7 Nothing herein should be construed as limiting either Party's rights with respect to its own Confidential Information or its obligations with respect to the other Party's Confidential Information under Section 222 of the Act.

20. **Waiver.** Except as otherwise provided herein, neither Party's failure to enforce any right or remedy available to it under this

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Agreement will be construed as a waiver of such right or a waiver of any other provision hereunder.

21. Regulatory Approval. In the event the FCC, a state commission or any other governmental authority or agency rejects or modifies any material provision in this Agreement, either Party may immediately upon written notice to the other Party terminate this Agreement. If a Party is required by a lawful, binding order to file this Agreement or a provision thereof with the FCC or state regulatory authorities for approval or regulatory review, the filing Party will provide written notice to the other Party of the existence of such lawful, binding order so that the other Party may seek an injunction or other relief from such order. In addition, the filing Party agrees to reasonably cooperate to amend and make modifications to the Agreement to allow the filing of the Agreement or the specific part of the Agreement affected by the order to the extent reasonably necessary.

22. Notices. Any notices required by or concerning this Agreement will be in writing and will be sufficiently given if delivered personally, delivered by prepaid overnight express service, sent by facsimile with electronic confirmation, or sent by certified mail, return receipt requested, or by email where specified in this Agreement to Qwest and CLEC at the addresses shown on the cover sheet of this Agreement.

23. Force Majeure. Neither Party will be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, "Force Majeure Event"). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers will be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event will give prompt notice to the other Party, will be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and will use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide Service to each other at a level equivalent to the level they provide themselves.

24. Governing Law. Colorado state law, without regard to choice-of-law principles, governs all matters arising out of, or relating to, this Agreement.

25. Dispute Resolution.

25.1 The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will within seven Days after delivery of the written notice of dispute, designate a vice-president level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions will be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations will be treated as Confidential Information developed for purposes of settlement, and will be exempt from discovery and production, and are

not admissible in any subsequent proceedings without the concurrence of both Parties.

25.2 If the designated representatives have not reached a resolution of the dispute within 15 Days after the written notice (or such longer period as agreed to in writing by the Parties), then either Party may commence a civil action. Any action will be brought in the United States District Court for the District of Colorado if it has subject matter jurisdiction over the action, and will otherwise be brought in the Denver District Court for the State of Colorado. The Parties agree that such courts have personal jurisdiction over them.

25.3 Waiver of Jury Trial and Class Action. Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.

25.4 No cause of action regardless of the form of action, arising out of, or relating to this Agreement, may be brought by either Party more than two years after the cause of action arises.

26. Headings. The headings used in this Agreement are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this Agreement.

27. Authorization. Each Party represents and warrants that:

A. the full legal name of the legal entity intended to provide and receive the benefits and Services under this Agreement is accurately set forth herein;

B. the person signing this Agreement has been duly authorized to execute this Agreement on that Party's behalf;

C. the execution hereof is not in conflict with law, the terms of any charter, bylaw, articles of association, or any agreement to which such Party is bound or affected; and

D. each Party may act in reliance upon any instruction, instrument, or signature reasonably believed by it to be authorized and genuine.

28. Third Party Beneficiaries. The terms, representations, warranties and agreements of the Parties set forth in this Agreement are not intended for, nor will they be for the benefit of or enforceable by, any third party (including, without limitation, Customer's Affiliates and End Users).

29. Insurance. Each Party will at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII with respect to liability arising from its operations for which that Party has assumed legal responsibility in this Agreement. If a Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent will be responsible for the insurance obligations contained in this Section, to the extent its affiliated Party fails to meet such obligations.

29.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

29.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage, including coverage for independent contractor's protection (required if any work

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will be subcontracted), products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance will not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

29.3 "All Risk" Property coverage on a full replacement cost basis insuring all of such Party's personal property situated on or within the Premises.

29.4 Each Party may be asked by the other to provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificate(s) upon request. Such certificates will:

- A. name the other Party as an additional Insured under commercial general liability coverage;
- B. provide 30 Days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate;
- C. indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by such Party; and
- D. acknowledge severability of Interest/cross liability coverage.

30. Communications Assistance Law Enforcement Act of 1994. Each Party represents and warrants that any equipment, facilities or Services provided to the other Party under this Agreement comply with the CALEA. Each Party will indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and will at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or Services provided to the other Party under this Agreement to ensure that such equipment, facilities and Services fully comply with CALEA.

31. Entire Agreement. This Agreement (including all Attachments, Exhibits, and other documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, including but not limited to, any term sheet or memorandum of understanding entered into by the Parties, to the extent they relate in any way to the subjects of this Agreement. Notwithstanding the foregoing, certain elements used in connection with the Service provided under this Agreement are provided by Qwest to CLEC under the terms and conditions of its interconnection agreement ("ICA"), and nothing contained herein is intended by the Parties to amend, alter, or otherwise modify those terms and conditions.

32. Proof of Authorization.

32.1 Each Party will be responsible for obtaining and maintaining Proof of Authorization ("POA"), as required by applicable federal and state law, as amended from time to time.

32.2 Each Party will make POAs available to the other Party upon request. In the event of an allegation of an unauthorized change or unauthorized service in accordance with all Applicable Laws and rules, the Party charged with the alleged infraction will be responsible for resolving such claim, and it will indemnify and hold harmless the other Party for any losses, damages, penalties, or other claims in connection with the alleged unauthorized change or service.

33. General Terms.

33.1 Qwest will provide general repair and maintenance services on its facilities, including those facilities supporting Services purchased by CLEC under this Agreement, at a level that is consistent with other comparable services provided by Qwest.

33.2 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to its network on an as needed basis. Qwest's deployment of Remote-Based DSL may cause interference or degradation in CLEC's service to CLEC's End User Customers, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417. Other maintenance and modernization activities, unrelated to Qwest's deployment of Remote-Based DSL, may result in minor changes to transmission parameters, such that the parameters remain within transmission limits of the Service ordered by CLEC. Qwest will provide advance notice of changes that affect network interoperability pursuant to applicable FCC rules.

33.3 Network Security.

A. Protection of Service and Property. Each Party will exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc., but in no case less than a commercially reasonable degree of care.

B. Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative will monitor any circuits except as required to repair or provide Service of any End User Customer at any time. Nor will an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

C. The Parties' networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

D. Qwest will not be liable for any losses, damages or other claims, including, but not limited to, uncollectible or unbillable revenues, resulting from accidental, erroneous, malicious, fraudulent or otherwise unauthorized use of Services or facilities ("Unauthorized Use"), whether or not such Unauthorized Use could have been reasonably prevented by Qwest, except to the extent Qwest has been notified in advance by CLEC of the existence of such Unauthorized Use, and fails to take commercially reasonable steps to assist in stopping or preventing such activity.

33.4 Individual Case Basis Requests. CLEC may request additional Services not specified in this Agreement and Qwest will consider such requests on an Individual Case Basis ("ICB").

33.5 Responsibility For Environmental Contamination.

A. Neither Party will be liable to the other for any costs

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whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected work location. Both Parties will defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from:

1. any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the work locations; or
2. the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

B. In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to CLEC by Qwest to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

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ATTACHMENT 1- DEFINITIONS**

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%.

"Applicable Law" means all laws, statutes, common law including, but not limited to, the Act, the regulations, rules, and final orders of the FCC, a state regulatory authority, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or a state regulatory authority.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers under Section 229 of the Act.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature and that: (a) the receiving Party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party; and/or (b) is of such a nature that the receiving Party should reasonably understand that the disclosing Party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Agreement by the receiving Party or is already known or is independently developed by the receiving Party.

"Customer" means the Person purchasing a Telecommunications Service or an information service or both from a Carrier.

"Day" means calendar days unless otherwise specified.

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more Carriers.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"FCC" means the Federal Communications Commission.

"Interexchange Carrier" or "IXC" means a Carrier that provides InterLATA or IntraLATA Toll services.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of Telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of Commercial Mobile Radio Service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Operational Support Systems" or "OSS" mean pre-ordering, Provisioning, maintenance, repair and billing systems.

"Order Form" means service order request forms issued by Qwest, as amended from time to time.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Proof of Authorization" or "POA" will consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider and may take the form of a third party verification format.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services from the other with attendant acknowledgments and status reports.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the North American Numbering Plan in connection with the provision of switched services.

"Remote-Based DSL" refers to a network architecture where the DSLAM serving End User Customers is not located in the Serving Wire Center. The DSLAM is generally located in a cabinet outside of the Serving Wire Center.

"Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular Customer Premises.

"Tariff" as used throughout this Agreement refers to Qwest interstate tariffs and state tariffs, price lists, and price schedules.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier will be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC will determine whether the provision of fixed and mobile satellite service will be treated as common carriage.

**QWEST COMMERCIAL LINE SHARING AGREEMENT
ATTACHMENT 1- DEFINITIONS**

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange Service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of basic exchange Telecommunications Services and access Services, are located.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act or elsewhere in the Agreement, will have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

Exhibit A

Exhibit A			Recurring	Non-Recurring
Shared Services				
209.4 Line Sharing				
209.4.1	Shared Loop, per Loop			
209.4.1.1	Intentionally Left Blank			
209.4.1.2	Rate Groups for determining recurring charge for Commercial Line Sharing			
209.4.1.2.1	Previous Year New Incremental Growth GREATER THAN OR EQUAL TO 17,500 lines		\$5.00	\$35.00
209.4.1.2.2	Previous Year New Incremental Growth GREATER THAN or Equal TO 12,500 lines but LESS THAN 17,500 lines		\$6.00	\$35.00
209.4.1.2.3	Previous Year New Incremental Growth GREATER THAN OR EQUAL TO 7,500 lines but LESS THAN 12,500 lines		\$7.00	\$35.00
209.4.1.2.4	Previous Year New Incremental Growth LESS THAN 7,500 lines		\$8.00	\$35.00
209.4.2	OSS - Per Line - Per Month		\$0.00	
209.4.3	Conversion Charge			ICB
209.4.4	Deloading			\$300.00
The following elements must be included in your Interconnection Agreement before ordering Line Sharing from your Commercial Agreement:				
Interconnection Tie Pairs (ITP) – Per Termination				
DS0				
DS1 Per each Termination				
DS3 Per each Termination				
Splitter Collocation				
Splitter Shelf Charge				
Splitter TIE Cable Connections				
Splitter in the Common Area - Data to 410 Block				
Splitter in the Common Area - Data Direct to CLEC				
Splitter on the IDF - Data to 410 Block				
Splitter on the IDF - Data Direct to CLEC				
Splitter on the MDF - Data to 410 Block				
Splitter on the MDF - Data Direct to CLEC				
Engineering				
Existing Bay				



Line Sharing Commercial Measurement Definitions

Version 1.2.1

July 30, 2004

FOC-1 – Firm Order Confirmations (FOCs) On Time

<p>Purpose: Monitors the timeliness with which Qwest returns Firm Order Confirmations (FOCs) to CLECs in response to LSRs received from CLECs, focusing on the degree to which FOCs are provided within specified intervals.</p>	
<p>Description: Measures the percentage of Firm Order Confirmations (FOCs) that are provided to CLECs within the intervals specified under "Performance Targets" below for FOC notifications.</p> <ul style="list-style-type: none"> • Includes all LSRs that are submitted through IMA-GUI and IMA-EDI interfaces that receive an FOC during the reporting period, subject to exclusions specified below. (Acknowledgments sent separately from an FOC (e.g., EDI 997 transactions are not included.) • For FOC-1A, the interval measured is the period between the LSR received date/time (based on scheduled up time) and Qwest's response with a FOC notification (notification date and time). • For FOC-1B, the interval measured is the period between the application date and time, as defined herein, and Qwest's response with a FOC notification (notification date and time). • "Fully electronic" LSRs are those (1) that are received via IMA-GUI or IMA-EDI, (2) that involve no manual intervention, and (3) for which FOCs are provided mechanically to the CLEC. • "Electronic/manual" LSRs are received electronically via IMA-GUI or IMA-EDI and involve manual processing. • LSRs will be evaluated according to the FOC interval categories shown in the "Performance Targets" section below, based on the number of lines requested on the LSR or, where multiple LSRs from the same CLEC are related, based on the combined number of lines requested on the related LSRs. 	
<p>Reporting Period: One month</p>	<p>Unit of Measure: Percent</p>
<p>Reporting: Individual CLEC</p>	<p>Disaggregation Reporting: Regional level.</p> <ul style="list-style-type: none"> • FOC-1A: FOCs provided for <u>fully electronic</u> LSRs received via IMA-GUI or IMA-EDI • FOC-1B: FOCs provided for <u>electronic/manual</u> LSRs received via IMA-GUI or IMA-EDI
<p>Formula: FOC-1A = $\{[\text{Count of LSRs for which the original FOC's "(FOC Notification Date \& Time) - (LSR received date/time (based on scheduled up time))" is within 20 minutes}] + (\text{Total Number of original FOC Notifications transmitted for the service category in the reporting period})\} \times 100$ FOC-1B = $\{[\text{Count of LSRs for which the original FOC's "(FOC Notification Date \& Time) - (Application Date \& Time)" is within the intervals specified for the service category involved}] + (\text{Total Number of original FOC Notifications transmitted for the service category in the reporting period})\} \times 100$</p>	

Exclusions:

- LSRs involving individual case basis (ICB) handling based on quantities of lines, as specified in the "Performance Targets" section below, or service/request types, deemed to be projects.
- Hours on Weekends and holidays. (Except for FOC-1A, which only excludes hours outside the scheduled system up time.)
- LSRs with CLEC-requested FOC arrangements different from standard FOC arrangements.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.
- Duplicate LSR numbers. (Exclusion to be eliminated upon implementation of IMA capability to disallow duplicate LSR #'s.)
- Invalid start/stop dates/times.

Product Reporting:		
Line Sharing		
	Standard FOC Intervals	
	Product Group <small>NOTE 1</small>	FOC Interval
	Line Sharing (1-24 lines)	24 hrs
Availability:		
TBD		
	Notes: 1. LSRs with quantities above the highest number specified for each product type are considered ICB.	

ICM-1 - Installation Commitments Met

Purpose: Evaluates the extent to which Qwest installs services for Customers by the scheduled due date.	
Description: Measures the percentage of orders for which the scheduled due date is met. <ul style="list-style-type: none"> All inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period are measured, subject to exclusions specified below. Change order types included in this measurement consist of all C orders representing inward activity (with "I" and "T" action coded line USOCs). Also included are orders with customer-requested due dates longer than the standard interval. <ul style="list-style-type: none"> Completion date on or before the Applicable Due Date recorded by Qwest is counted as a met due date. The Applicable Due Date is the original due date or, if changed or delayed by the customer, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the customer-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any. 	
Reporting Period: One month	Unit of Measure: Percent
Reporting: Individual CLEC	Disaggregation Reporting: Regional level. <ul style="list-style-type: none"> Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: ICM-1A Dispatches (Includes within MSA and outside MSA); and ICM-1B No dispatches. Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: ICM-1C Interval Zone 1 and Interval Zone 2 areas.
Formula: $\frac{[(\text{Total Orders completed in the reporting period on or before the Applicable Due Date}) + (\text{Total Orders Completed in the Reporting Period})] \times 100}{\text{Total Orders Completed in the Reporting Period}}$	
Exclusions: <ul style="list-style-type: none"> Disconnect, From (another form of disconnect) and Record order types. Due dates missed for standard categories of customer and non-Qwest reasons. Standard categories of customer reasons are: previous service at the location did not have a customer-requested disconnect order issued, no access to customer premises, and customer hold for payment. Standard categories of non-Qwest reasons are: Weather, Disaster, and Work Stoppage. Records involving official company services. Records with invalid due dates or application dates. Records with invalid completion dates. Records with invalid product codes. Records missing data essential to the calculation of the measurement per the measure definition. 	
Product Reporting	
MSA-Type:	
Line Sharing	
Zone-Type:	
Availability: TBD	Notes:

OII-1 - Order Installation Interval

<p>Purpose: Evaluates the timeliness of Qwest's installation of services for CLECs, focusing on the average time to install service.</p>	
<p>Description: Measures the average interval (in business days) between the application date and the completion date for service orders accepted and implemented.</p> <ul style="list-style-type: none"> • Includes all inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period, subject to exclusions specified below. Change order types for additional lines consist of all C orders representing inward activity. • Intervals for each measured event are counted in whole days: the application date is day zero (0); the day following the application date is day one (1). • The Applicable Due Date is the original due date or, if changed or delayed by the CLEC, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the Applicable Due Date is the CLEC-initiated due date, if any, that is (a) subsequent to the original due date and (b) prior to a Qwest-initiated, changed due date, if any. ^{NOTE 1} • Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date, as applied in the formula below, are calculated by subtracting the latest Qwest-initiated due date, if any, following the Applicable Due Date, from the subsequent CLEC-initiated due date, if any. ^{NOTE 1} 	
<p>Reporting Period: One month</p>	
<p>Unit of Measure: Average Business Days</p>	
<p>Reporting: Individual CLEC</p>	<p>Disaggregation Reporting: Regional level.</p> <ul style="list-style-type: none"> • Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: OII-1A Dispatches (Includes within MSA and outside MSA); and OII-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: OII-1C Interval Zone 1 and Interval Zone 2 areas.
<p>Formula: $\frac{\Sigma[(\text{Order Completion Date}) - (\text{Order Application Date}) - (\text{Time interval between the Original Due Date and the Applicable Date}) - (\text{Time intervals associated with CLEC-initiated due date changes or delays occurring after the Applicable Due Date})]}{\text{Total Number of Orders Completed in the reporting period}}$ </p>	
<p>Explanation: The average installation interval is derived by dividing the sum of installation intervals for all orders (in business days) by total number of service orders completed in the reporting period.</p>	
<p>Exclusions:</p> <ul style="list-style-type: none"> • Orders with CLEC requested due dates greater than the current standard interval. • Disconnect, From (another form of disconnect) and Record order types. • Records involving official company services. • Records with invalid due dates or application dates. • Records with invalid completion dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. • Orders involving individual case basis (ICB) handling based on quantities of lines, circuits or loops, or orders deemed to be projects. 	

Product Reporting:		
MSA-Type -		Reported As:
Line Sharing		Average business days
Zone-Type -		
•		
Availability: TBD	Notes: 1. According to this definition, the Applicable Due Date can change, per successive CLEC-initiated due date changes or delays, up to the point when a Qwest-initiated due date change occurs. At that point, the Applicable Due Date becomes fixed (i.e., with no further changes) as the date on which it was set prior to the first Qwest-initiated due date change, if any. Following the first Qwest-initiated due date change, any further CLEC-initiated due date changes or delays are measured as time intervals that are subtracted as indicated in the formula. These delay time intervals are calculated as stated in the description. (Though infrequent, in cases where multiple Qwest-initiated due date changes occur, the stated method for calculating delay intervals is applied to each pair of Qwest-initiated due date change and subsequent CLEC-initiated due date change or delay. The intervals thus calculated from each pairing of Qwest and CLEC-initiated due dates are summed and then subtracted as indicated in the formula.) The result of this approach is that Qwest-initiated impacts on intervals are counted in the reported interval, and CLEC-initiated impacts on intervals are not counted in the reported interval.	

OOS24-1 - Out of Service Cleared within 24 Hours

Purpose:

Evaluates timeliness of repair for specified services, focusing on trouble reports where the out-of-service trouble reports were cleared within the standard estimate for specified services (i.e., 24 hours for out-of-service conditions).

Description:

Measures the percentage of out of service trouble reports, involving specified services, that are cleared within 24 hours of receipt of trouble reports from CLECs or from retail customers.

- Includes all trouble reports, closed during the reporting period, which involve a specified service that is out-of-service (i.e., unable to place or receive calls), subject to exclusions specified below.
- Time measured is from date and time of receipt to date and time trouble is indicated as cleared.

Reporting Period: One month

Unit of Measure: Percent

Reporting:
Individual CLEC

Disaggregation Reporting: Regional level.

- Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving:
OOS24-1A Dispatches (Includes within MSA and outside MSA); and
OOS24-1B No dispatches.
- Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations:
OOS24-1C Interval Zone 1 and Interval Zone 2 areas.

Formula:

$$\left[\frac{\text{Number of Out of Service Trouble Reports closed in the reporting period that are cleared within 24 hours}}{\text{Total Number of Out of Service Trouble Reports closed in the reporting period}} \right] \times 100$$

Exclusions:

- Trouble reports coded as follows:
 - For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).
 - For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE).
- Subsequent trouble reports of any trouble before the original trouble report is closed.
- Information tickets generated for internal Qwest system/network monitoring purposes.
- Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation".
- For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay.
- Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.
- Records involving official company services.
- Records with invalid trouble receipt dates.
- Records with invalid cleared or closed dates.
- Records with invalid product codes.
- Records missing data essential to the calculation of the measurement per the measure definition.

Product Reporting:			
MSA-Type -			
• Line Sharing			
Zone-Type -			
•			
Avallability: TBD	Notes:		

MTTR-1 - Mean Time to Restore

Purpose: Evaluates timeliness of repair, focusing how long it takes to restore services to proper operation.	
Description: Measures the average time taken to clear trouble reports. <ul style="list-style-type: none"> • Includes all trouble reports closed during the reporting period, subject to exclusions specified below. • Includes customer direct reports, customer-relayed reports, and test assist reports that result in a trouble report. • Time measured is from date and time of receipt to date and time trouble is cleared. 	
Reporting Period: One month	Unit of Measure: Hours and Minutes
Reporting: Individual CLEC	Disaggregation Reporting: Regional level. <ul style="list-style-type: none"> • Results for product/services listed in Product Reporting under "MSA Type Disaggregation" will be reported according to orders involving: MTTR-1A Dispatches (Includes within MSA and outside MSA); and MTTR-1B No dispatches. • Results for products/services listed in Product Reporting under "Zone-type Disaggregation" will be reported according to installations: MTTR-1C Interval Zone 1 and Interval Zone 2 areas.
Formula: $\frac{\sum[(\text{Date \& Time Trouble Report Cleared}) - (\text{Date \& Time Trouble Report Opened})]}{(\text{Total number of Trouble Reports closed in the reporting period})}$	
Exclusions: <ul style="list-style-type: none"> • Trouble reports coded as follows: <ul style="list-style-type: none"> - For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous - Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider). - For products measured from WFA (Workforce Administration) data (products listed for Zone-type disaggregation) trouble reports coded to trouble codes for No Trouble Found (NTF), Test OK (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE). • Subsequent trouble reports of any trouble before the original trouble report is closed. • Information tickets generated for internal Qwest system/network monitoring purposes. • Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type Disaggregation". • For products measured from MTAS data (products listed for MSA-type disaggregation), trouble reports involving a "no access" delay. • Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete. • Records involving official company services. • Records with invalid trouble receipt dates. • Records with invalid cleared or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 	

Product Reporting:		
MSA-Type - Line Sharing		
Zone-Type -		
•		
Availability: TBD	Notes:	

TR-1 - Trouble Rate

Purpose: Evaluates the overall rate of trouble reports as a percentage of the total installed base of the service or element.	
Description: Measures trouble reports by product and compares them to the number of lines in service. <ul style="list-style-type: none">• Includes all trouble reports closed during the reporting period, subject to exclusions specified below.• Includes all applicable trouble reports, including those that are out of service and those that are only service-affecting.	
Reporting Period: One month	Unit of Measure: Percent
Reporting Individual CLEC	Disaggregation Reporting: Regional level.
Formula: [[Total number of trouble reports closed in the reporting period involving the specified service grouping) + (Total number of the specified services that are in service in the reporting period)] x 100	
Exclusions: <ul style="list-style-type: none">• Trouble reports coded as follows:<ul style="list-style-type: none">– For products measured from MTAS data (products listed for MSA-type, trouble reports coded to disposition codes for: Customer Action; Non-Telco Plant; Trouble Beyond the Network Interface; No Field Visit Test OK, No Field Visit Found OK, Field Visit Found OK, and Miscellaneous – Non-Dispatch, non-Qwest (includes CPE, Customer Instruction, Carrier, Alternate Provider).– For products measured from WFA (Workforce Administration) data (products listed for Zone-type) trouble reports coded to trouble codes for No Trouble Found (NTF), Test O K (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE).• Subsequent trouble reports of any trouble before the original trouble report is closed.• Information tickets generated for internal Qwest system/network monitoring purposes.• Time delays due to "no access" are excluded from repair time for products/services listed in Product Reporting under "Zone-type".• For products measured from MTAS data (products listed for MSA-type, trouble reports involving a "no access" delay.)• Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete.• Records involving official company services.• Records with invalid trouble receipt dates.• Records with invalid cleared or closed dates.• Records with invalid product codes.• Records missing data essential to the calculation of the measurement per the measure definition.	

Product Reporting:	
MSA Type:	
• Line Sharing	
Zone Type:	
•	
Availability: TBD	Notes:

EXHIBIT B TO COMMERCIAL LINE SHARING AGREEMENT

1. All of CLEC's Line Sharing arrangements ordered pursuant to this Agreement, shall not be subject to performance assurance plan remedies or any other service quality standards or remedies applicable to Qwest.

In lieu of these performance provisions, Qwest shall provide performance reporting on the following commercial line sharing metrics:

- Firm Order Commitments On Time
- Installation Commitments Met
- Order Installation Interval
- Out of Service Cleared within 24 Hours
- Mean Time to Restore
- Trouble Rate

The business rules for the foregoing metrics are attached and are subject to change upon written notice to CLEC. In addition, Qwest shall provide CLEC with ad hoc data showing the monthly Repeat Trouble rate for Commercial Line Sharing arrangements in a reasonable form and manner for the term of the Agreement in any month that CLEC makes a written request for such ad hoc data.

Qwest Communications® Service Interval Guide For

Exhibit C Shared Loop/Line Sharing

V1.0

Product	Activity/Features	Services Ordered	FOC Guidelines	Installation Guidelines	Repair Guidelines
Shared Loop/Line Sharing	No conditioning		24 hours	Three (3) Business Days	24 hours OOS 48 hours AS
	With conditioning With Line Move / UDC Removal			Fifteen (15) Business Days Five (5) Business Days	

**QWEST COMMERCIAL LINE SHARING AGREEMENT
ATTACHMENT 2—SERVICE DESCRIPTION**

WHEREAS CLEC desires to acquire and Qwest desires to provide commercial line sharing arrangements outside of and without regard to the standards and limitations set forth in sections 251, 252, and 271 and other relevant provisions of the Act and the implementing rules and regulations of the FCC;

THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CLEC and Qwest agree to the following terms and conditions for commercial line sharing as follows:

Section 1.0 – PREAMBLE

1.1 The Parties acknowledge and agree that the Agreement was negotiated and entered into on commercial terms and conditions mutually agreed upon and without regard to the standards set forth in Sections 251, 252, 271 and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 The Agreement is being made available by Qwest to set forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting competitive local exchange carrier nondiscriminatory access to commercial line sharing arrangements, provided that, the requesting CLEC agrees to each and every term and condition set forth herein, each of which the Parties agree is an essential, necessary, and inextricable term and condition of the Agreement.

1.3 CLEC represents and covenants that upon execution of the Agreement, it expressly agrees that the terms and conditions contained herein will be its exclusive means for ordering line shared loops during the term of the Agreement.

Section 2.0 – COMMERCIAL LINE SHARING

2.1 Commercial Line Sharing

2.1.1 **Description.** Commercial Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing End User Customer's analog voice-grade ("POTS") service provided by Qwest on a single copper loop referred to herein as "Commercial Shared Loop" by using the frequency range above the voice band on a copper loop. This frequency range will be referred to herein as the High Frequency Portion of the loop ("HFPL"). A splitter separates the voice and data traffic and allows the copper loop to be used for simultaneous data transmission and Qwest POTS service. The splitter must be provisioned prior to ordering Commercial Line Sharing. The POTS service must be provided to the End User Customer by Qwest.

2.1.1.1 Qwest agrees to provide Line Sharing on a commercial basis as set forth below.

2.1.1.1.1 CLEC may order Commercial Line Sharing arrangements during the term of the Agreement in accordance with the provisions of this subsection. The monthly recurring charge for any Commercial Line Sharing arrangement will apply as set forth below.

(a) The monthly recurring charge for any Commercial Line Sharing arrangement under the Agreement will be as provided in Exhibit A attached to the Agreement. The monthly recurring charge will be adjusted based on the year over year additional net volume of new Commercial Line Shared arrangements provided by Qwest in Qwest's service territory under the Agreement.

(b) To determine the year over year annual additional net volume of Commercial Line Sharing arrangements, Qwest

will subtract the total number of Commercial Line Sharing arrangements in service under the Agreement as of September 30 of the immediate previous year from the total number of Commercial Line Sharing arrangements in service under the Agreement as of September 30 of the current year. If CLEC is involved in a merger or acquisition and the other party's Commercial Line Sharing arrangements are thereafter governed by this Agreement, the year over year additional net volume of new Commercial Line Shared arrangements calculation in this section will be made as if those arrangements had always been governed by this Agreement such that the other party's Commercial Line Sharing arrangements in service as of a particular September 30 will not be treated as new Commercial Line Sharing arrangements.

2.1.1.1.2 **Discontinuation of Voice Service.** Notwithstanding anything herein to the contrary, if Qwest disconnects an End User Customer's voice service in accordance with Applicable Law, then CLEC will have the option to purchase the entire loop being disconnected if it wishes to continue providing DSL service to such End User Customer; provided that, if CLEC does not exercise such option, both the DSL and voice services provisioned over the line will be disconnected by Qwest.

2.1.1.1.3 **Conversion of Existing Line Sharing Arrangements.** CLEC may convert any existing line sharing arrangements under its Interconnection Agreement or any amendment thereto to Commercial Line Sharing during the term of the Agreement, provided that, such conversions will not be included as New Incremental Growth for purposes of determining pricing of Commercial Line Sharing under Exhibit A. A separate, cost-based conversion charge may apply.

2.1.1.1.4 **Possible Interference or Service Degradation.** Qwest's deployment of Remote-Based DSL may cause interference or degradation in CLEC's service to CLEC's End User Customers, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417. Qwest will incur no liability to CLEC for any interference with or degradation to CLEC's service to CLEC's End User Customers caused by Qwest's deployment of Remote-Based DSL, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417.

2.1.2 Terms and Conditions

2.1.2.1 General

2.1.2.1.1 To order the HFPL, CLEC must have a splitter installed in the Qwest Wire Center that serves the End User Customer as provided for in this Section. Splitters may be installed in Qwest Wire Centers per the collocation section of CLEC's Interconnection agreement with Qwest. Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two points of termination. The End User Customer must have dial tone originating from a Qwest switch in that Wire Center. CLEC must provide the End User Customer with, and is responsible for, the installation of a splitter, filter(s) and/or other equipment necessary for the End User Customer to receive separate voice and data service across a single copper loop.

2.1.2.1.2 CLEC may use the HFPL to provide any xDSL services that will not interfere with analog voiceband transmissions and otherwise in accordance with Applicable

**QWEST COMMERCIAL LINE SHARING AGREEMENT
ATTACHMENT 2—SERVICE DESCRIPTION**

Law. Such services currently include but may not be limited to ADSL, RADSL, Multiple Virtual Lines (MVL) and G.lite. In the future, additional services may be used by CLEC to the extent those services are deemed acceptable for Commercial Line Sharing deployment under Applicable Law or governing industry standards.

2.1.2.1.3 CLEC may not order the HFPL on a given copper loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the End User Customer provides authorization to the new provider to perform the disconnect of the Incumbent provider's DSL or other service using the high frequency spectrum.

2.1.2.1.4 CLEC may request, and Qwest will provide, required conditioning on up to 5% of the Commercial Shared Loops arrangements ordered by CLEC in a calendar year. Conditioning will mean the removal of load coils and interfering bridged taps, but will not include any line moves or special construction. UDC removal and line moves may be provided by Qwest on Commercial Shared Loop arrangements in accordance with Qwest's facility provisioning and routine network modification processes; notwithstanding the foregoing, Qwest may modify or discontinue such processes pursuant to Applicable Law. Any conditioning above the 5% cap will be subject to the charges for loop conditioning in Exhibit A. Qwest will perform requested conditioning, including de-loading and removal of interfering bridged taps, unless Qwest demonstrates in advance that conditioning a Commercial Shared Loop will significantly degrade the End User Customer's analog voice-grade POTS service. Based on the pre-order make-up of a given copper loop, CLEC can make a preliminary determination if the loop can meet the technical parameters applicable to the data service it intends to provide over the loop.

2.1.2.1.4.1 Qwest may conduct an annual audit to determine the sum of conditioned Commercial Line Shared loops in the preceding calendar year (January through December), if any, that exceeded the 5% cap on conditioning. The number that exceed the 5% cap will be assessed a non-recurring charge to be assessed for all conditioning performed above the 5% cap described in Section 2.1.2.1.4 of this Attachment. CLEC will pay such charges within 30 days of receiving notice of them.

2.1.3 Rate Elements

2.1.3.1 Recurring Rates for Commercial Shared Loop.

2.1.3.1.1 Commercial Shared Loop Charge - A monthly recurring charge for the use of the Commercial Shared Loop will apply. This charge will be inclusive of any charges to recover modification or upgrade costs to Qwest Operations Support Systems required to accommodate line sharing, whether such charges are recovered by Qwest as recurring or non-recurring charges. Notwithstanding the foregoing, OSS development, enhancement, and maintenance costs applicable to all unbundled network elements may be recovered through a separate cost-based charge pursuant to Applicable Law.

2.1.3.1.2 Interconnection Tie Pairs - Two Interconnection Tie Pairs (2 ITPs), 1 for voice and 1 for combined voice/data, per connection.

2.1.3.2 Nonrecurring Rates for the Commercial Shared Loop.

2.1.3.2.1 Basic Installation Charge for Commercial Shared Loop - A nonrecurring charge for each Commercial Shared Loop installed will apply. As provided in Section 2.1.2.1.4, conditioning will be included in this charge, subject to the 5% cap on conditioning.

2.1.3.2.2 If the conditioning significantly degrades the voice services on the loop such that it is unacceptable to the End User Customer, CLEC will pay the conditioning charge in Exhibit A to recondition the loop.

2.1.3.2.3 A separate conditioning charge may apply pursuant to Section 2.1.2.1.4 above.

2.1.3.2.4 Any miscellaneous work performed by Qwest at the request of CLEC will be billed according to current Qwest's federal access tariff, and CLEC agrees to pay such charges.

2.1.3.2.5 A separate cost-based charge for conversions of existing line sharing arrangements pursuant to section 2.1.1.1.3 may apply. If the Parties cannot mutually agree upon such charge, Qwest will apply a conversion charge on an ICB basis, and CLEC agrees to pay such charges.

2.1.3.3 Nonrecurring Rates for Maintenance and Repair.

2.1.3.3.1 Trouble Isolation Charge - A nonrecurring charge for trouble isolation will be applied in accordance with Qwest's federal access tariff.

2.1.3.3.2 Additional Testing - CLEC may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A nonrecurring charge will apply in accordance with Qwest's current federal access tariff.

2.1.4 Ordering Process

2.1.4.1 Commercial Shared Loop.

2.1.4.1.1 As a part of the pre-order process, CLEC may access loop characteristic information through the loop information tool provided as part of Qwest's OSS. CLEC will determine, at its sole discretion, whether to order the HFPL across any specific copper loop. CLEC will indemnify and hold harmless Qwest for any damage or liability relating to the suitability of the loop to provide the services to and users that CLEC seeks to provide.

2.1.4.1.2 The appropriate splitter meet points dedicated to the splitters will be provided on the Line Sharing Actual Point of Termination (APOT) form one day prior to the ready for service date or at an interval agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to splitters. Qwest will administer all cross-connects/jumpers on the COSMIC™/MDF and ICDF.

2.1.4.1.3 Basic Installation "lift and lay" procedure will be used for all Commercial Shared Loop orders. Under this approach, a Qwest technician "lifts" the loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's collocated equipment in the same Wire Center.

**QWEST COMMERCIAL LINE SHARING AGREEMENT
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2.1.4.1.4 Qwest will provision the Commercial Shared Loop within the standard unbundled loop provisioning interval as defined in Exhibit C.

2.1.4.1.4.1 Synchronization Testing ("Sync Testing") is an option associated with collocation space and Commercial Line Sharing service requests. For more information refer to Synchronization Testing at the Supporting Documentation Section:
<http://www.qwest.com/wholesale/pcat/collocation.html>

Sync Testing will be performed as part of the standard provisioning and repair processes for Commercial Line Sharing requests in central offices where such capability has been requested. The Sync Test will be performed in lieu of an electrical continuity test performed on the data side of the circuit. The electrical continuity test will still be performed if the Sync Test is not requested. When Sync Testing is performed, CLEC will be notified if there is a problem in their equipment and if the test fails, the service request will be placed in a jeopardy status.

2.1.4.1.5 CLEC will not place initial orders for Commercial Shared Loops until all Infrastructure work necessary to provision Commercial Line Sharing in a given Qwest Wire Center, including, but not limited to, splitter installation and the cable reclassification or augmentation has been completed. Upon CLEC request at any time, including before placing an order, Qwest will arrange for a Wire Center walkthrough to verify the Commercial Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

2.1.4.1.6 Prior to placing an LSR for Commercial Shared Loop, CLEC must obtain a Proof of Authorization from the End User Customer in accordance with the Proof of Authorization Section.

2.1.5 Repair and Maintenance

2.1.5.1 Qwest will allow CLEC to access Commercial Shared Loops at the point where the combined voice and data loop is cross connected to the splitter.

2.1.5.2 Qwest will be responsible for repairing voice services provided over Commercial Shared Loops and the physical line between network interface devices at End User Customer premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at End User Customer premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its End User Customers. CLEC will be responsible for repairing data services provided on Commercial Shared Loops and is entitled to test the entire frequency range of the loop facility. Qwest and CLEC each will be responsible for maintaining its equipment. The entity that controls the splitters will be responsible for their maintenance, unless CLEC has opted to self-provision splitter card maintenance.

2.1.5.3 Qwest will provide Maintenance and Repair for Commercial Line Sharing in accordance with the procedures in the methods and procedures section of the Line Sharing product catalog that is made available on Qwest's website:
<http://www.qwest.com/wholesale/pcat/interconnection.html>

2.1.5.3.1 Qwest and CLEC are responsible for their respective End User Customer base. Qwest and CLEC will have the responsibility for resolution of any service trouble report(s) initiated by their respective End User Customers.

2.1.5.4 Qwest and CLEC will work together to address End User Customer initiated repair requests and to prevent adverse impacts to the End User Customer.

2.1.5.4.1 Any miscellaneous work performed by Qwest at the request of the CLEC will be billed according to current Qwest federal access tariff and CLEC agrees to pay such charges.

2.1.5.5 Qwest's deployment of Remote-Based DSL may cause interference or degradation in CLEC's service to CLEC's End User Customers, as long as Qwest's Remote-Based DSL meets generally accepted industry standards, such as T1.417. If CLEC alerts Qwest to such interference or degradation, Qwest will attempt to mitigate such interference or degradation by moving the loop to a new binder group.

2.1.6 Performance Metrics

2.1.6.1 **Commercial Performance Measures and Reporting, Performance Targets and Service Credits (Including in Washington, if Washington 2.1.6.1 is selected by CLEC as Indicated on Signature Page).** Installation and Repair metrics for performance are contained in Exhibit B attached to the Agreement.

2.1.6.2 **Service Performance Measures and Reporting and Performance Assurance Plan (PID/PAP) (for Washington only, if Washington 2.1.6.2 is selected by CLEC as Indicated on Signature Page).** If selected by CLEC in accordance with the Agreement, Qwest will provide, in Washington only, Commercial Line Sharing arrangements provided under the Agreement with Service Performance Measures and Reporting and Performance Assurance Plan (PID/PAP) as described in this Section 2.1.6.2 and not subject to Section 2.1.6.1.

2.1.6.2.1 If selected by CLEC under this Section 2.1.6.2, Qwest will, in Washington only provide performance measurements, reporting, and remedies compliant with Washington PIDs and the Qwest Washington PAP to the Commercial Line Sharing arrangements, if eligible, provided under the Agreement. Only in the state of Washington, and only if expressly selected by CLEC under the terms and conditions of the Agreement, does this PID and PAP replace, in their entirety the Commercial Performance Measures and Reporting, Performance Targets and Service Credits terms and conditions for Commercial Line Sharing arrangements provided under Section 2.1.6.1 of this Attachment.

2.1.6.2.2 The PIDs and PAP for Washington, in their current form, are posted in the Qwest Wholesale PCAT, currently called Negotiations Template Agreement PCAT, under Exhibit B and Exhibit K for Washington, respectively. Those PIDs and that PAP are incorporated by referenced into, and made a part of, the Agreement. Subsequent changes to the PIDs or PAP submitted to the Washington Utilities and Transportation Commission ("WUTC") will be incorporated into the applicable exhibit as soon as they are effective either by operation of law or WUTC order, whichever occurs first and without further amendment to the Agreement.

2.1.6.2.3 To select the Service Performance Measures and Reporting and Performance Assurance Plan (PID/PAP) option, CLEC must be a certified CLEC under applicable state rules and have elected the PID and PAP under its Washington interconnection agreement with Qwest.

**QWEST COMMERCIAL LINE SHARING AGREEMENT
ATTACHMENT 2—SERVICE DESCRIPTION**

2.1.6.2.4 Eligible Commercial Line Sharing arrangements will be included in the UNE line sharing PAP results beginning the first full month following the Effective Date.

2.1.6.2.5 Notwithstanding the dispute resolution provisions in the Agreement, the Parties will resolve any dispute, claim or controversy arising out of, or relating to, the PID or PAP under the dispute resolution process described in the PAP.

2.1.7 Intervals

2.1.7.1 Installation and Repair Intervals are contained in Exhibit C attached to the Agreement.