

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

### 10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, U S WEST will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.<sup>1</sup>

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a Pole owned or controlled by U S WEST.<sup>2</sup>

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<sup>1</sup> Washington Workshop June 21-23, 2000 (proposed)

<sup>2</sup> Colorado Workshop (proposed 7/14/00).

10.8.1.2 Ducts and Conduits – Where it has ownership ~~and~~ control to do so, U S WEST will provide CLEC with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services.<sup>3</sup> A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in U S WEST immediately upon installation; ownership of such innerduct shall vest to U S WEST if and when CLEC abandons such innerduct.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building.<sup>4</sup> Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.<sup>5</sup>

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.<sup>6</sup>

10.8.1.3 Rights of Way (ROW) –Where it has ownership or control to do so, U S WEST will provide, via a quitclaim without warranty, to CLEC, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services.<sup>7</sup>

10.8.1.3.1 ROW ~~includes~~ means a real property interest in ~~privately-owned land or other~~ real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit U S WEST to place telecommunications facilities on such real property; such property ~~owned or controlled by U S WEST and~~ may permit U S WEST to install and maintain facilities ~~run~~-under, on, above, across, along or through ~~public or private~~ property or enter multi-unit buildings.<sup>8</sup>

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

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<sup>3</sup> Washington Workshop July 6, 2000 (proposed)

<sup>4</sup> Colorado Workshop (proposed 7/14/00)

<sup>5</sup> Colorado Workshop August 1-3, 2000 (proposed); Washington Workshop July 6, 2000 (consensus)

<sup>6</sup> Colorado Workshop (proposed 7/14/00)

<sup>7</sup> Colorado Workshop (proposed 7/14/00)

<sup>8</sup> Colorado Workshop (proposed 7/14/00)

## **10.8.2 Terms and Conditions**

U S WEST shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised U S WEST Right of Way, Pole Attachment and/or Innerduct Occupancy General Information dDocument ~~U S WEST Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions~~ attached

hereto as Exhibit D.<sup>9</sup> U S WEST will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. U S WEST shall not give itself preference when assigning space.

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

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

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

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

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

10.8.2.6 U S WEST retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event U S WEST determines that rearrangement of the existing facilities on Poles/Innerduct, conduit

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<sup>9</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>10</sup> Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

<sup>11</sup> Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a U S WEST spare conduit include the placement of Innerduct, U S WEST or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

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

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

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

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

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<sup>12</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

sharing in the cost of governmentally mandated pole or other facility modification. U S WEST does not and will not favor itself over other carriers when provisioning access to Poles, Innerduct And ~~Rights-Of-Way~~ ROW.

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

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

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

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

10.8.2.15 The costs of inspections made during construction and/or the final

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<sup>13</sup> Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon U S WEST~~ nor relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.<sup>14</sup>

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

10.8.2.18 If U S WEST terminates an ~~Order~~ for cause, or if CLEC terminates an ~~Order~~ without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~Order(s)~~ and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause U S WEST to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to U S WEST until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to U S WEST's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Quitclaim Right of Access Agreement (the "Quitclaim") by which U S WEST quitclaimed a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to U S WEST or its predecessor.<sup>15</sup>

10.8.2.19 U S WEST may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from U S WEST at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days

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<sup>14</sup> Colorado Workshop June 6-8, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>15</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

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

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

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

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<sup>16</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 (consensus)

<sup>17</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)



by U S WEST rather than CLEC.<sup>18</sup> CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from U S WEST of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by U S WEST within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or U S WEST may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

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

10.8.2.24 U S WEST will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Attachment Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided, however, that any Quitclaim that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.<sup>19</sup>

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

### 10.8.3 Rate Elements

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

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

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<sup>18</sup> Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

<sup>19</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

~~for lease.~~ Separate Inquiry Fees apply for ROW, poles and ~~for conduit/innerduct.~~<sup>20</sup>

10.8.3.2 Field Verification Fee/Quitclaim Preparation Fee. In the case of Poles and Innerduct, ~~A~~ the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for poles and manholes. In the case of ROW, the Quitclaim Preparation Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for preparation of the Quitclaim for each ROW requested by the CLEC. The ~~estimated pre-paid~~ Field Verification and Quitclaim Preparation ~~f~~Fees shall be billed in advance. ~~Separate Field Verification Fees apply for poles and for manholes.~~<sup>21</sup>

10.8.3.3 Make-Ready ~~Work~~Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for ~~lease~~access. For innerduct ~~leases~~, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, ~~this~~Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW or other circumstances giving rise to such work beyond the simple preparation of one or more Quitclaims. The estimated pre-paid fee shall be billed in advance.<sup>22</sup>

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

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

10.8.3.6 ~~ROW Access Fee~~Quitclaim Consideration. A pre-paid fee which constitutes consideration for quitclaiming the ROW to CLEC.~~is charged for the access, including during any Make-Ready period, to ROW.~~ This fee shall be a one-

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<sup>20</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

<sup>21</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

<sup>22</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

<sup>23</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>24</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

time (i.e., non-recurring) fee. ~~annual unless GLEC requests that it be semi-annual.~~<sup>25</sup>

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<sup>25</sup> ~~Colorado Workshop (proposed 7/14/00) Colorado Workshop June 29-30, 2000 (consensus)  
Washington Workshop June 21-23, 2000 (consensus)~~

## 10.8.4 Ordering

~~The Ordering Process has~~ There are two (2) steps required before placing an Order for ROW access to Innerduct and/or Poles Attachment: Inquiry Review and Field Verification. There is only one step required before obtaining access to ROW: Inquiry Review.<sup>26</sup> ~~distinct steps for ROW, Innerduct and Pole Attachment:~~

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding request for ROW access, Pole Attachment or Innerduct Occupancy, U S WEST will provide CLEC with a document of General Information for Pole Attachment and Innerduct Occupancy Exhibit D, along with a description of the application process<sup>27</sup> The CLEC will review the documents and provide U S WEST with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on U S WEST owned or controlled Poles, Innerduct and by ROW. The CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.BA from Exhibit D.<sup>28</sup> ~~its inquiry.~~

### 10.8.4.2 Inquiry Reviews

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

10.8.4.1.2b) ~~Inquiry Review -- Poles.~~ U S WEST will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.<sup>30</sup> ~~The U S WEST field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs,~~

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<sup>26</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>27</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>28</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus)

<sup>29</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

<sup>30</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop June 21-23, 2000 (proposed)

~~number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time.~~

10.8.4.1.3 Inquiry Review – ROW. U S WEST shall, upon request of CLEC, provide a copy of ROW agreements (e.g. easements and licenses) the ROW Matrix to CLEC within ~~forty-five (45)~~ ten (10) days of the request. U S WEST makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that U S WEST's files contain only the original ROW instruments, and that the current owner of the fee estate may not be the party identified in the document provided by U S WEST.<sup>31</sup>

~~10.8.4.32 Request – Innerduct Field Verification – (Poles and Ducts), and Quitclaim Preparation (ROW) and ROW. CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or quitclaim preparation for ROW. If field verification or quitclaim preparation is desired, CLEC will sign and return Attachment 1.B of the General Information document Exhibit D along with a check for the estimated verification relevant costs fee (Field Verification Fee or Quitclaim Preparation Fee) plus \$10.00 per quitclaim as consideration for the quitclaim. Upon payment of the estimated verification relevant costs fee and quitclaim consideration, if applicable, U S WEST will provide, as applicable: depending on whether the request is for Poles, or Innerduct or ROW: Innerduct and/or ROW, the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way records for restrictions and to identify to CLEC what additional right-of-way permission is required; and from whom; (a) in the case of Poles or Innerduct, a field survey and site investigation of the Poles or D/Innerduct or ROW, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Quitclaim(s), executed and acknowledged by U S WEST. Upon completion of the~~

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<sup>31</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop July 6, 2000 – (proposed) (proposed 7/14/00)

Quitclaim(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Quitclaim becomes effective to quitclaim the interest identified in the Quitclaim (if any) to the extent that U S WEST has the right to quitclaim such interest (if any). ~~In the case of Poles or Innerduct, Such estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. the General Information document and shall be completed within thirty-five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between U S WEST and CLEC identified in the Cost Quotation. The Attachment 2 quotation shall be valid for ninety (90) calendar days. U S WEST will charge CLEC for field engineer time.~~<sup>32</sup>

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

10.8.4.3 Order – Poles, and Innerduct Ducts. ~~Upon completion of the procedures described above, U S WEST shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated lease recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the Make-Ready fees identified, U S WEST will assign the CLEC's-requested space and complete the commence any Make-Ready work which may be required. U S WEST will notify CLEC when Poles/Innerduct are ready. for attachment of facilities~~<sup>34</sup>.

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<sup>32</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)(except for interval) (includes Colorado Workshop language proposed 7/14/00)

<sup>33</sup> Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)

<sup>34</sup> Colorado Workshop June 29-30, 2000 (consensus) Washington Workshop June 21-23, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)

10.8.4.54 Estimates of Make-Ready in the Order are used to cover actual Make-Ready costs.<sup>35</sup>

~~However, if~~ 10.8.4.4.1 If U S WEST requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed estimate.<sup>36</sup>

10.8.4.4.2 Within fifteen (15) business days of a request therefore, U S WEST will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if U S WEST does not possess all such records at the time of the request, then U S WEST will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) ~~thirty (30) calendar days of the completion of Make-Ready work.~~ calendar days following its receipt of an invoice after notification of the completion of Make-Ready work.<sup>37</sup>

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within ~~thirty (30)~~ sixty (60) calendar days following receipt of invoice if CLEC after notification of the completion of Make-Ready Work of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of U S WEST's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event, later than ninety (90) days following the request for credit.<sup>38</sup>

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, U S WEST denies the request for Poles, Ducts or ROW, upon CLEC request, U S WEST will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. ~~If U S WEST denies the Poles/Innerduct, ROW request, U S WEST shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and~~ Upon CLEC request, U S WEST will also refund the

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<sup>35</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

<sup>36</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

<sup>37</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink to verify)

<sup>38</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink- in WA to verify)

difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any, upon request.<sup>39</sup> Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or U S WEST's receipt of all records relating to the actual costs, whichever comes last, but in no event, later than ninety (90) days following the cancellation or denial.<sup>40</sup>

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### 10.8.5 Billing

CLEC agrees to pay U S WEST Poles/Innerduct/ROW preparation charges the following Fees in advance and usage fees ("Fees") in advance as specified in the Request and Order (Attachments 1.A, 1.B and Attachment 2 of Exhibit D the General Information Document): Inquiry Fee, Field Verification Fee, Quitclaim Preparation Fee, Make Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Quitclaim Consideration.<sup>41</sup> Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Such Usage Fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual Usage Fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual Usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All Fees Such Usage Fees shall be paid within thirty (30) days following receipt of invoices, therefore.<sup>42</sup> No Fees are not refundable except as expressly provided herein.

### 10.8.6 Maintenance and Repair

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

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<sup>39</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

<sup>40</sup> Colorado Workshop June 29-30, 2000 (proposed) Washington Workshop July 6, 2000 (proposed)(Nextlink in WA to verify)

<sup>41</sup> Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus)

<sup>42</sup> Colorado Workshop August 1-3, 2000 (proposed) Washington Workshop July 6, 2000 (consensus) (includes Colorado Workshop language proposed 7/14/00)