

## EXHIBIT D

Date General Information Provided by USW:

General Agreement Number :

BAN Number(must be assigned before processing): \_\_\_\_\_

### REVISED U S WEST POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 3/13/00

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

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

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

As indicated on Form 1. A, a copy of the signed form and maps of the desired route should be sent to the Product Manager while the fee should be sent to the U S WEST CLEC Joint Use Manager with the original signed form 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the duct/pole system. Area Maps should be equal to the best street maps available. U S WEST Central Offices should be identified where possible. Faxes are not acceptable.

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

2.2 Request Attachment 1.B (Verification). Upon review and acceptance of signed Attachment 1.B and

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

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

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

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

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

The costs included in the Poles/Innerduct Permit Processing Costs Quotation are used to cover the costs incurred by USW in determining if Poles/Innerduct space is available to meet the Co-Provider's request; however, the Co-Provider must agree and will be responsible for payment of the

actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If USW denies access to the Poles/Innerduct Request, or section thereof, USW shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

### 3. **DISPUTE RESOLUTION**

- a. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association (“AAA”) unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.
- b. All expedited procedures prescribed by the AAA shall apply. The arbitrator’s decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.
- c. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.
- d. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party’s costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney’s fees.

**ATTACHMENT 1. A**

General Agreement No. \_\_\_\_\_

BAN Number (must be assigned before processing): \_\_\_\_\_  
**Poles/Innerduct Inquiry Preparation Fee**

Date Submitted: \_\_\_\_\_

Date Replied to Co-Provider: \_\_\_\_\_

Co-Provider Name: \_\_\_\_\_

Contact name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

e-mail address: \_\_\_\_\_

State or location of inquiry: \_\_\_\_\_

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

	<u>Costs</u>	<u>Est. Miles</u>	<u>Total</u>
1. Pole Database & Field Engineer inquiry	\$ 114.00 per mile	_____	\$ _____
2. Innerduct Database inquiry	\$ 171.00 per mile	_____	\$ _____
3. Estimated Interval for Completion of Items 1 or 2:	_____ 10 _____	Days	
4. Additional requirements of Co-Provider:	_____		

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

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

U S WEST Communications, Inc.

Signature

Name Typed or Printed

Title

Date

Signature

JOHN CARVETH

Name Typed or Printed

PRODUCT MANAGER

Title

Date

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

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

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

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

**ATTACHMENT 1.B**

General Agreement No.  
BAN Number: \_\_\_\_\_

**Poles/Innerduct Verification Costs Quotation**

Date Nonrefundable Received: \_\_\_\_\_ Date Replied to Co-Provider: \_\_\_\_\_

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

	Estimated Costs	Number	Total Charge
Pole Field Survey (10 pole minimum)	\$5.00 per pole	_____	_____
Innerduct Field Survey	\$406.00 per Manhole	_____	_____

Estimated Interval for Completion of Items 1 or 2: \_\_\_\_\_ Working Days

Additional requirements of Co-Provider: \_\_\_\_\_

Comments: \_\_\_\_\_

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

U S WEST Communications, Inc.

Signature

Name Typed or Printed

Title

Date

Signature

JOHN CARVETH

Name Typed or Printed

PRODUCT MANAGER

Title

Date

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

**John Carveth, U S WEST Structure Product Manager, Suite 2330, 1801 California, Denver, CO**

**80202**

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

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



U S WEST Field Engineer: \_\_\_\_\_

Phone Number: \_\_\_\_\_

U S WEST Communications, Inc.

Signature

Name Typed or Printed

Title

Date

Signature

JOHN CARVETH

Name Typed or Printed

PRODUCT MANAGER

Title

Date

## ATTACHMENT 3

General Agreement No. \_\_\_\_\_

### U S WEST POLE AND ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS

This is an Agreement between \_\_\_\_\_ (“Co-Provider”) and **U S WEST Communications, Inc.** (“USW”), for one or more Orders for the Co-Provider to install/attach and maintain their communications facilities (“Facilities”) to USW’s Poles and/or placement of Facilities on or within USW’s Innerduct (collectively “Poles/Innerduct”) described in the General Information and Co-Provider Map, which are incorporated herein by this reference (singularly “Order” or collectively, “Orders”).

#### 1. SCOPE.

- 1.1 Subject to the provisions of this Agreement, USW agrees to issue to Co-Provider for any lawful telecommunications purpose, one or more nonexclusive, revocable Orders authorizing Co-Provider to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned in whole or in part by USW. Any and all rights granted to Co-Provider shall be subject to and subordinate to any future local, state and/or federal requirements.
- 1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel USW to construct, install, modify, or place any Poles/Innerduct or other facility for use by Co-Provider.
- 1.3 USW agrees to provide access to Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. **TERM.** Any Order issued under this Agreement shall continue in effect for the term specified in the Order. This Agreement shall continue during such time Co-Provider is providing Poles/Innerduct attachments under any Order to this Agreement.

#### 3. TERMINATION WITHOUT CAUSE.

- 3.1 Co-Provider may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to USW. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.
- 3.2 Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.
- 3.3 If USW terminates this Agreement for Cause, or if Co-Provider terminates this Agreement without Cause, Co-Provider shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause USW to remove its Facilities from the Poles/Innerduct at Co-Provider’s expense; provided, however, that Co-Provider shall be liable for and pay all fees and charges

provided for in this Agreement to USW until Co-Provider's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.

- 3.4 If this Agreement or any Order is terminated for reasons other than Cause, then Co-Provider shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that Co-Provider shall be liable for and pay all fees and charges provided for in this Agreement to USW until Co-Provider's Facilities are physically removed.
- 3.5 USW may abandon or sell any Poles/Innerduct at any time by giving written notice to the Co-Provider. Upon abandonment of Poles/Innerduct, and with the concurrence of the other Co-Provider(s), if necessary, Co-Provider shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from USW, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

#### **4. CHARGES AND BILLING.**

- 4.1. Co-Provider agrees to pay USW Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. Co-Provider shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.
- 4.2. USW has the right to revise Fees, at its sole discretion, upon written notice to Co-Provider within at least sixty (60) days prior to the end of any annual billing period.

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

- 5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
- 5.2. General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the Co-Provider hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or underpinning. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.
- 5.3. Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage.

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

- 5.4 USW may require the Co-Provider from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by USW shall be borne by USW, and the Co-Provider shall arrange to have such costs billed separately and directly to USW by the insuring carrier(s). USW shall be authorized by the Co-Provider to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the Co-Provider's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a whole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.
- 5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by USW. The Co-Provider shall forward to USW, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) USW is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to USW; (3) certification that underground hazard coverage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The Co-Provider shall not commence work hereunder until the obligations of the Co-Provider with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the Co-Provider of any liability hereunder or in any way modify the Co-Provider's obligations to indemnify USW.
- 5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in name of the Railroad with standard limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars (\$6,000,000.00). In addition, said policy shall name USW and the Co-Provider/SubCo-Provider on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the USW and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.
- 5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

## **6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.**

- 6.1 USW retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a USW spare conduit include the placement of innerduct, USW retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event USW determines that rearrangement of the existing facilities on Poles/Innerduct is required before Co-Provider's Facilities can be accommodated, the cost of such modification will be included in the Co-Provider's nonrecurring charges for the associated Poles/Innerduct Order.
- 6.2 Co-Provider shall be responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable,

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

- 6.3 Co-Provider's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. USW's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate USW premises. Co-Provider's procedures governing its standards maintenance practices for Facilities shall be made available to USW upon written request. Co-Provider shall within thirty (30) days comply and provide the requested information to USW to bring their facilities into compliance with these terms and conditions.
- 6.4. In the event of any service outage affecting both USW and Co-Provider, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exist, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.
- 6.5 In the event of an infrastructure outage, the Co-Provider should contact their Network Maintenance Center at 1-800-223-7881 or the Co-Provider may contact their Account Manager at the Interconnect Service Center.

## **7. MODIFICATION TO EXISTING POLES/INNERDUCT.**

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

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

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

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

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

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

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

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

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

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections,

shall not impose any liability of any kind upon USW, and shall not relieve Co-Provider of any responsibilities, obligations, or liability arising under this Agreement.

## **9. UNAUTHORIZED FACILITIES**

- 9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USW, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars (\$200.00) per attachment per Pole or innerduct run between manholes, and require the Co-Provider to submit in writing, within ten (10) day after receipt of written notification from USW of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USW within the specified time period, the Co-Provider will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USW may remove the Co-Provider's facilities without liability, and the cost of such removal shall be borne by the Co-Provider.
- 9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not Co-Provider is ordered to continue the occupancy of the Poles/Innerduct system.
- 9.3. No act or failure to act by USW with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by USW of any of its rights of privileges under this Agreement or otherwise.

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

**11. INDEMNIFICATION AND LIMITATION OF LIABILITIES.** Co-Provider shall indemnify and hold harmless USW, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the Co-Provider; (2) actual or alleged fault or negligence of the Co-Provider, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by Co-Provider under this Contract or any product liability claims relating to any material supplied by Co-Provider under this Contract; (4) failure of Co-Provider, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by Co-Provider or its employees, agents, subcontractors,

or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of USW, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the USW or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the Co-Provider. If both USW and the Co-Provider are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the Co-Provider, if USW desires. USW shall give the Co-Provider reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the Co-Provider's request and at the Co-Provider's expense all information and assistance available to the USW for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

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

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

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

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

## 12. **FORCE MAJURE**

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

12.2 If such contingency occurs, USW may elect:

- 12.2.1 To terminate this Agreement as to the Order in question; or
  - 12.2.2 To terminate already-assigned specific work assignment(s) the Co-Provider is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or
  - 12.2.3 To suspend already-assigned specific work assignment(s) the Co-Provider is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.
- 12.3 USW shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by USW after the contingency occurs. With respect to USW's election of Section 12.2.3 above:
- 12.3.1 USW shall give the Co-Provider written notice of the work to be performed by such other party prior to its performance and shall deduct from the Co-Provider's price the cost of the work or services actually performed by such other parties.
  - 12.3.2 The Co-Provider shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.
  - 12.3.3 If appropriate, at the USW's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.
- 12.4 USW shall be excused from its performance if prevented by acts or events beyond the USW's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

### **13. DISPUTE RESOLUTION.**

- 13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.
- 13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.
- 13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.
- 13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the

action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

- 14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided.
- 15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.
- 16. **GENERAL PROVISIONS.**
  - 16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.
  - 16.2 This Agreement shall not be assignable by Co-Provider without the express written consent of USW, which shall not be unreasonably withheld. Assignment of this Agreement by Co-Provider to Co-Provider's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that Co-Provider must obtain USW's consent in any event.
  - 16.3 This Agreement benefits Co-Provider and USW. There are no third party beneficiaries.
  - 16.4 This Agreement constitutes the entire understanding between Co-Provider and USW with respect to Service provided herein and supersedes any prior agreements or understandings.

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

Co-Provider  
WEST Communications, Inc.

U S

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Title

Signature

\_\_\_\_\_  
JOHN CARVETH

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
PRODUCT MANAGER

\_\_\_\_\_  
Title

Date

Address for Notices

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_  
FAX: \_\_\_\_\_

Date

Address for Notices

U S WEST Communications, Inc.  
1801 California, Rm. 2330  
Denver, CO 80202

Contact: JOHN CARVETH  
Phone: 303-896-0789  
FAX: 303-896-9022

PULLING IN REPORT

\_\_\_\_\_ 19\_\_\_\_

U S WEST Communications, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

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

Municipality

<u>Location</u>		<u>Cable and Equipment Installed</u>	<u>Date</u>
<u>From Manhole at</u>	<u>To Manhole at</u>		

\_\_\_\_\_  
Name of Co-Provider

By: \_\_\_\_\_

Title: \_\_\_\_\_

Receipt of the above report is hereby acknowledged \_\_\_\_\_, 19\_\_\_\_.

U S WEST Communications, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Co-Provider: \_\_\_\_\_

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

Street Address  
City and State  
Date

U S WEST, Inc.

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

CONDUIT LOCATION	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD.OR MODIFIED
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\_\_\_\_\_  
Name of Licensor

\_\_\_\_\_  
Name of Co- Provider

\_\_\_\_\_  
Date Notification Received

By \_\_\_\_\_

\_\_\_\_\_  
Date Modification Accepted

Title \_\_\_\_\_

By \_\_\_\_\_

Discontinued:

Total duct footage

Co-Provider

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

Street Address  
City and State  
Date

U S WEST, Inc.

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

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

Date Notification Received \_\_\_\_\_  
Date Modification Received \_\_\_\_\_

By: \_\_\_\_\_

Discontinued:  
\_\_\_\_\_

Poles \_\_\_\_\_  
Anchors \_\_\_\_\_  
Anchor/Guy Strands \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Co-Provider

By: \_\_\_\_\_

Its: \_\_\_\_\_