

UT-0413418 (AF)
8-11-04



Qwest Corporation
1600 7th Avenue, Room 3206
Seattle, Washington 98191
(206) 345-1568
Facsimile (206) 343-4040

Mark S. Reynolds
Senior Director - Regulatory
Policy and Law

July 19, 2004

Ms. Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Attn: Kathy Folsom

RE: WAC 480-146-350 Affiliated Interest Agreement

Dear Ms. Washburn:

In accordance with WAC 480-146-350, this filing is notification of a new affiliated interest agreement between Qwest Corporation ("QC") and Qwest Communications Corporation ("QCC"). The attached Dark Fiber Lease Agreement covers services that QCC is providing to QC. Even though the effective agreement of this contract was June 21, 2004, the fiber is not yet installed and is expected to be in service in August.

Please call Joyce McDonald on 206-345-1514 if you have any questions or require any additional information.

Very truly yours,

for Mark Reynolds

Attachment

RECEIVED
REGISTRATION
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OFFICE OF THE
SECRETARY

DARK FIBER LEASE AGREEMENT

THIS DARK FIBER LEASE AGREEMENT (the "Agreement") is made and entered into as of this 21st day of June, 2004 (the "Effective Date"), by and between **QWEST COMMUNICATIONS CORPORATION**, a Delaware corporation ("Qwest"), and **QWEST CORPORATION**, a Colorado corporation ("Lessee").

RECITALS:

WHEREAS, Qwest, through ownership or other arrangement, possesses the right to use or operate a fiber optic telecommunication network between various points within the United States; and

WHEREAS, Lessee desires to obtain from Qwest, and Qwest desires to lease to Lessee, rights to use certain optical dark fibers in the Qwest Network under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS

1.1 Capitalized terms used herein are defined in this Agreement or in Addendum 1 hereto.

2. LEASED FIBERS

2.1 Qwest hereby leases to Lessee the Leased Fibers described in Exhibit A on the terms of, and subject to, the covenants and conditions set forth in this Agreement, including all Exhibits hereto.

2.2 The Leased Fibers are located along the System Route described in Exhibit A.

3. CONSIDERATION

3.1 In consideration of the lease by Qwest to Lessee, commencing on the Acceptance Date Lessee agrees to pay to Qwest an annual lease fee of forty thousand four-hundred seventy six U.S. Dollars (US\$40 476.00) (the "Lease Fee"). The Lease Fee shall be inclusive of any fees related to Scheduled Maintenance services. Qwest will submit to Lessee an invoice for the Lease Fee on or after the Acceptance Date and Lessee will pay Qwest thirty (30) days after receipt of invoice. Thereafter, Qwest will invoice Lessee all subsequent Lease Fees on or after the anniversary date of the Acceptance Date during the Term of this Agreement. The Lease Fee for any partial period shall be prorated based on the number of days in that period. Except as expressly set forth herein, the Lease Fee shall not be refundable.

4. DELIVERY AND ACCEPTANCE TESTING

4.1 Qwest will use commercially reasonable efforts to Deliver the Leased Fibers within ninety (90) days following the Effective Date.

4.2 Upon Delivery and, to the extent commercially reasonable, each segment of the Leased Fibers shall comply with the specifications set forth in Exhibit B hereto. Qwest shall test each segment in accordance with the procedures specified in Exhibit B to verify

that it is operating in accordance with the specifications in Exhibit B ("Fiber Acceptance Test"). Qwest shall provide Lessee with reasonable advance notice of the date and time of each applicable acceptance test so that Lessee shall have the right, but not the obligation, to have a person or persons present to observe the tests. Upon Lessee's request, Qwest shall promptly provide Lessee with a copy of the test results.

4.3 In the event the results of any applicable Fiber Acceptance Test show that the Leased Fibers are not operating in accordance with the applicable specifications in Exhibit B, Qwest shall promptly take commercially reasonable action to bring the segment of the Leased Fibers that is not operating within the applicable specifications into compliance with such standards. In no event shall the unavailability, incompatibility, delay in installation, or other impairment of any of Lessee's interconnection facilities or any other customer controlled facilities including Lessee's suppliers (e.g., a local access telephone service provider) be used as a basis for rejecting any portion of the Leased Fibers granted hereunder.

4.4 Qwest will notify Lessee when any applicable segment of the Leased Fibers has met the specifications in Exhibit B. Within ten (10) days of receipt of such notice, Lessee shall sign and deliver to Qwest an acceptance letter acknowledging the Delivery of each segment in the System Route. By signing the acceptance letter, Lessee acknowledges that each Leased Fiber segment listed in the acceptance letter complies with the applicable specifications. If Lessee determines that any Leased Fiber segment does not comply with these specifications, it shall notify Qwest in writing within the ten (10) day period. Such notice shall specify in detail how the applicable Leased Fiber segment does not conform. If within the ten (10) day period Lessee fails to provide such notice, or if the notice does not provide reasonable specificity, or if Lessee fails to deliver an acceptance letter, Lessee shall be deemed to have accepted the applicable Leased Fiber segments on the eleventh (11th) day. If Lessee does properly provide a notice to Qwest that the applicable Leased Fibers does not conform, Qwest shall use its commercially reasonable efforts to remedy such nonconformance as soon as practicable. For the purposes hereof, the "Acceptance Date" shall be the date the acceptance letter is executed or the date the Lessee has been deemed to have accepted the applicable Leased Fiber segments.

5. TERM

5.1 Subject to Section 5.2 below, the term of this Agreement (the "Term") shall begin on the Effective Date and shall continue until five (5) years pass from the Effective Date. Subject to the following conditions, this Agreement may be renewed for one (1) additional five (5) year terms (the "Renewal Term"). Lessee may request renewal by delivering written notice to Qwest no later than ninety (90) days prior to the expiration of the original Term. If Qwest, in its sole and absolute discretion, grants Lessee's request to renew this Agreement, then Qwest shall give Lessee written notice of such determination within thirty (30) days of receipt of Lessee's notice. Failure by Qwest to deliver such notice shall be deemed to constitute Qwest's determination not to renew this Agreement. If Qwest determines to renew this Agreement, Lessee and Qwest shall negotiate a fee (the "Renewal Fee") that shall be the equivalent of the then fair market rent for the use of the Leased Fibers for the Renewal Term. The Renewal Fee shall be payable on or before the expiration of the original Term. During the Renewal Term, Lessee shall be bound by the terms hereof.

5.2 At the expiration of this Agreement, the lease of the Leased Fibers shall immediately terminate, and all rights of Lessee to use the Qwest Network, or any part thereof, shall cease. At the end of the Term or any Renewal Term, Lessee shall immediately cease using the Leased Fibers that are the subject hereof and at Lessee's sole cost and expense remove any and all equipment associated with the Leased Fibers. In the

event said equipment has not been removed within thirty (30) days of the termination, then Qwest shall be entitled to remove such equipment and Lessee shall reimburse Qwest for the Cost thereof.

6. MAINTENANCE

- 6.1 Lessee shall have no right to use any portion of the Qwest Network or any property associated therewith except as expressly set forth herein. The Leased Fibers are subject to and provisioned in accordance with the specifications in Exhibit B hereto, which may be modified from time to time by Qwest.
- 6.2 Qwest will use commercially reasonable efforts to maintain the Leased Fibers in accordance with the specifications in Exhibit B hereto. All maintenance charges for Scheduled Maintenance are included with the Lease Fees and all charges for Un-scheduled Maintenance are set forth in Exhibit B.
- 6.3 This Agreement does not obligate Qwest to supply to Lessee any optical or electrical equipment, or other facilities, including without limitation, Local Distribution Facilities, collocation space, regeneration facilities, generators, batteries, air conditioners, fire protection equipment, monitoring equipment and testing equipment, all of which are the sole responsibility of Lessee. Qwest is not responsible for performing any work or providing any service other than as specifically set forth in this Agreement.

7. PERMITS; UNDERLYING RIGHTS; RELOCATION

- 7.1 The Leased Fibers are subject and subordinate to the terms of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The Leased Fibers are further subject and subordinate to the prior right of the grantor of the Underlying Rights to use the right of way for other business activities, including railroad operations, telecommunications uses, pipeline operations or any other purposes, and to the prior right of Qwest to use its rights granted under the Underlying Rights. The rights granted herein are expressly made subject and subordinate to each and every limitation, restriction or reservation affecting the Underlying Rights. Nothing herein shall be construed to be a representation, warranty or covenant of Qwest's right, title or interest with respect to the right of way or the Underlying Rights.
- 7.2 If Qwest, upon expiration or other termination of an Underlying Right, is unable to renew or obtain alternative Underlying Rights using its commercially reasonable efforts, Qwest shall not be deemed in breach hereof and Lessee's sole and exclusive remedy shall be a refund (without interest) of the pro-rated unused portion of any Lease Fee pro rated to the portion of the System Route materially and adversely affected by the Underlying Rights which were not renewed or obtained, and the Agreement as it pertains to that portion of the System Route shall terminate.
- 7.3 If Qwest determines, in its reasonable discretion, or is required to relocate any part of the Qwest Network during the Term or any Renewal Term, including any of the facilities used or required in providing the Leased Fibers, Qwest shall reasonably determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall be constructed and tested in accordance with the specifications set forth in Exhibit B, and incorporate fiber meeting the specifications of the original Leased Fibers. In the event of a relocation, Qwest shall use commercially reasonable efforts to minimize the disruption of Lessee's use of the Leased Fibers. All costs of such relocation shall be paid by Qwest.

- 7.4 In the event of a relocation, Qwest may, at its sole discretion, route the Leased Fibers through additional terminals, end links, POPs or regeneration facilities. In this event, Qwest shall be responsible for all additional Costs associated solely with these additional, non-required facilities.
- 7.5 Relocation pursuant to this Section shall not affect the Term or any Renewal Term.

8. ACCESS TO QWEST POPS

- 8.1 Lessee and its designees (such as local telecommunications providers) shall have access to each Qwest POP specified in Exhibit A (if any Qwest POPs are specified) for the purposes of interconnecting with the Leased Fibers. All such access and interconnection shall be performed by Qwest and shall be subject to the access and interconnection standards and procedures regularly established by Qwest, and as modified by it from time to time. The Costs of all such interconnections, together with the Costs of all splicing and testing required thereby, shall be paid by Lessee.

9. USE OF QWEST NETWORK

- 9.1 Lessee represents and warrants that the use by its customers or end users of the Leased Fibers and Qwest Network shall comply with all applicable laws, ordinances, rules, regulations and restrictions and will be used for interstate purposes only.
- 9.2 This Agreement grants to Lessee no right to use any element of the Qwest Network other than the right to use the Leased Fibers pursuant to the terms hereof. Lessee shall keep any and all portions of the Qwest Network, including the Leased Fibers, free from any liens, rights or claims of any third party that can be attributed to Lessee.
- 9.3 Lessee shall be responsible for the configuration and operation of Lessee's network using the Leased Fibers, including the provisioning of all Local Distribution Facilities, interconnection facilities, lateral facilities, network equipment, testing equipment and procedures, maintenance (other than maintenance of the Leased Fibers or any portion of the Qwest Network), and other facilities or actions necessary to use the Leased Fibers. Local Distribution Facilities shall be separately acquired by Lessee and may be provided by a local telephone company or other third party, and must comply with Qwest's applicable engineering and operations requirements. Local Distribution Facilities are not part of the Leased Fibers, and Lessee's acceptance of the Leased Fibers may not be conditioned upon the availability of such Local Distribution Facilities. Lessee shall conduct all operations and use of the Leased Fibers in a manner that does not interfere with the Qwest Network or the use thereof by Qwest or any other customer of Qwest. Lessee shall at all times comply with Qwest's operating procedures and interconnection requirements.
- 9.4 Lessee shall include in each of its agreements with customers who use the Leased Fibers or any tariff covering any service that uses any portion of the Leased Fibers or the Qwest Network (including the Leased Fibers), a provision which holds Qwest harmless to such customers and limits the liability of Lessee to the charges received by Lessee for such service for interruptions, failures, or degradation of service.
- 9.5 Lessee and Qwest agree to cooperate and support each other in complying with any requirements applicable to their respective rights and obligations under this Agreement that are imposed by any governmental agency, regulatory agency or authority.

- 9.6 This Agreement does not grant Lessee any right, title or interest in any portion of the Qwest Network. Lessee shall not have the right to possess, control, hold title to, change, replace, upgrade, modify, sell, salvage or encumber the Leased Fibers or any other Qwest equipment or fiber. Qwest retains the exclusive right to provide services or sell or lease fibers to other customers or end users, or otherwise profit from the Qwest Network and any property associated therewith, and Lessee shall have no right to receive income, proceeds, profits or otherwise benefit from or interfere with those activities. The Lessee acknowledges that interruptions, outages, or degradations in the actual transmission capability of the Leased Fibers may occur from time to time.

10. INDEMNIFICATION

- 10.1 Lessee agrees to release, indemnify, defend, protect, and hold harmless Qwest, its employees, officers, directors, agents, shareholders and Affiliates, from and against, and assumes liability for the following:
- (a) Any injury, loss or damage to any person, tangible property or facilities of any third person or entity or Qwest (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from either: (i) the acts or omissions, negligent or otherwise, of Lessee, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees or vendors; or (ii) acts and omissions of Lessee constituting a default under this Agreement;
 - (b) Any claims, liabilities or damages arising out of any violation by Lessee of any regulation, rule, statute or order of any local, state or federal governmental agency, court or body in connection with the use of the Leased Fibers hereunder;
 - (c) Any claims, liabilities or damages arising out of any interference with or infringement of the rights of any third party as a result of Lessee's use of the Leased Fibers hereunder not in accordance with the provisions of this Agreement; and
 - (d) Any claims, liabilities or damages arising out of the use, resale, sharing or modification of the Leased Fibers or any other portion of the Qwest Network by Lessee and/or its customers or end users.
- 10.2 Nothing contained herein shall operate as a limitation on Qwest's right to bring an action for damages against any third party, such damages to include, but not be limited to, direct, indirect, statutory, special, consequential or punitive damages, based on any acts or omissions of a third party that may affect the construction, operation or use of the Leased Fibers or the Qwest Network; provided, however, that Lessee agrees to promptly assign any such rights, actions, or claims to Qwest and execute documents and take any other action reasonably necessary to enable Qwest to pursue any right, action or claim against a third party.

11. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES

- 11.1 WITH THE EXCEPTION OF LESSEE'S OBLIGATION TO INDEMNIFY QWEST HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES (WHETHER OR NOT THE SAME ARE FORESEEABLE). ANY CLAIM OR CAUSE OF ACTION REQUESTING OR CLAIMING SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR A PARTY WAS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. EXAMPLES OF SUCH DAMAGES PROHIBITED UNDER THIS AGREEMENT, IN-

CLUDE, BUT ARE NOT LIMITED TO, THOSE ARISING OUT OF CLAIMS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, AND/OR STRICT LIABILITY.

11.2 DAMAGES PROHIBITED UNDER THIS AGREEMENT INCLUDE, BUT ARE NOT LIMITED TO, DAMAGE TO PROPERTY, DAMAGE TO EQUIPMENT, LOST PROFITS OR REVENUE (WHETHER ARISING OUT OF OUTAGES, TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR FUNCTIONAL DEGRADATION, LOSS OF UNDERLYING RIGHTS, OR ANY OTHER REASON), COST OF CAPITAL, OPPORTUNITY COSTS, COST OF REPLACEMENT SERVICES OR PROPERTY, COVER DAMAGES, OR CLAIMS OF LESSEE'S CUSTOMERS, END USERS OR THIRD PARTIES, CLAIMS RELATING TO CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR OR MAINTENANCE, OR ANY OTHER CAUSE WHATSOEVER. WITHOUT LIMITING THE FOREGOING, QWEST'S TOTAL LIABILITY IN THIS AGREEMENT SHALL IN NO EVENT EXCEED TEN THOUSAND DOLLARS (\$10,000

11.3 LESSEE ACKNOWLEDGES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, QWEST MAKES NO WARRANTY REPRESENTATION OR INDEMNITY WITH RESPECT TO THE LEASED FIBERS, THE QWEST NETWORK, THE ASSOCIATED PROPERTY AND SERVICES, THE FACILITIES, OR ANY WORK PERFORMED UNDER THIS AGREEMENT, INCLUDING ANY AND ALL WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, AND LESSEE HEREBY EXPRESSLY WAIVES AND DISCLAIMS ALL SUCH WARRANTIES, REPRESENTATIONS AND INDEMNITIES. THE WARRANTIES SET FORTH IN THIS AGREEMENT CONSTITUTE THE ONLY WARRANTIES MADE BY QWEST TO LESSEE WITH RESPECT TO THIS AGREEMENT AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES MADE BY QWEST TO LESSEE WITH RESPECT TO THIS AGREEMENT AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED.

11.4 EXCEPT AS EXPRESSLY SET FORTH HEREIN, QWEST DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED FIBERS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

12. INSURANCE

12.1 Each party ("the Insuring Party") shall 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 minimum "Best's" rating of A VII. The Insuring Party shall require its subcontractors and agents to maintain the same insurance.

(a) Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy by the Insuring Party of any premises in connection with this Agreement, including coverage for premises operation, products/completed operations and contractual liability coverage. The limits of insurance shall not be less than:

Each Occurrence	\$5,000,000
General Aggregate	\$10,000,000
Products/Completed Operations	\$5,000,000
Personal & Advertising Injury	\$5,000,000

(b) Workers' Compensation insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee entering onto any prem-

ises in connection with this Agreement, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$100,000 each accident.

(c) Comprehensive Automobile Liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Agreement, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

(d) Any other insurance coverages specifically required of such party pursuant to Qwest's right-of-way agreements with railroads or other third parties.

- 12.2 The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Selfinsurance can be utilized for a retention of up to \$1,000,000. The Insuring Party shall forward to the other party (the "Insured Party") certificate(s) of the insurance required by this Section 12 upon execution of this Agreement and upon any renewal of such insurance during the Term. The certificate(s) shall provide that (1) for insurance under 12.1 (a) and (c) the Insured Party be named as additional insured as their interest may appear with respect to this Agreement; (2) thirty (30) days prior written notice of cancellation, material change or exclusion to any required policy shall be given to the Insured Party; (3) coverage is primary and not excess of, or contributory with hereunder, any other valid and collectible insurance purchased or maintained by the Insured Party.

13. PAYMENT

- 13.1 Other than the Lease Fee and the Renewal Term, all other payments due hereunder, if any, shall be due thirty (30) days after the date of Qwest's invoice. All payments shall be made by wire transfer consistent with the following wire transfer instructions or such other written instructions that Qwest provides to Lessee:

National City Bank
Louisville, Kentucky
ABA #0830 00056
DDA #354075341

If any amount due under this Agreement is not received by its respective due date, in addition to its other available remedies, Qwest may in its sole and absolute discretion impose a late payment charge pursuant to Section 13.2. Notwithstanding anything in this Agreement to the contrary, no payment due hereunder is subject to reduction, recoupment, set-off, offset or adjustment of any nature by Lessee. All disputes or requests for billing adjustments must be submitted in writing by the due date and submitted with payment of all undisputed amounts due. Any amounts that are determined by Qwest to be in error or not in compliance with this Agreement shall be adjusted on the next month's invoice. Any disputed amounts that are deemed by Qwest to be correct as billed and in compliance with this Agreement, shall be due and payable by Lessee upon notification and demand by Qwest, along with any late payment charges that Qwest may impose pursuant to Section 13.2. Disputes shall not be cause for Lessee to delay payment to Qwest of the undisputed balance according to the terms outlined in this Section. Invoices submitted to Lessee by Qwest shall conform to Qwest's standard billing format and content, as modified by Qwest from time to time.

- 13.2 In the event a party shall fail to make any payment under this Agreement when due, such delinquent amounts shall accrue interest, from the date such payment is due until paid in full (including accrued interest) at an annual rate equal to one hundred fifty percent (150%) of the prime rate of interest published by The Wall Street Journal on the date such payment is due, or, if lower, the highest percentage allowed by law. In ad-

dition, Qwest may offset any amounts not paid when due, thereby reducing any amounts that Qwest or its Affiliates may owe to Lessee or Lessee's Affiliate under any other agreements between the parties or their respective Affiliates.

14. CHARACTERIZATION OF TRANSACTION

- 14.1 This Agreement is a lease of Leased Fibers and does not grant to Lessee any ownership interest in the Leased Fibers or any ownership, license or other possessory interests in the Qwest Network.

15. TAXES, FEES AND OTHER GOVERNMENTAL IMPOSITIONS

- 15.1 Qwest is responsible for, and shall pay, all governmental assessments of a similar character that are included within the definition of Imposition, franchise taxes, right-of-way fees, and property taxes with respect to the construction, ownership, or operation of the Qwest Network which are imposed or assessed for periods prior to the Effective Date.
- 15.2 Except as set forth in Section 15.1 herein, Lessee shall be solely responsible throughout the Term for any Impositions properly payable with respect to the lease granted hereunder. The parties agree that they will cooperate with each other to minimize all Impositions and to coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to the activities or transactions arising from or under this Agreement, which originate from an authorized governmental tax authority.
- 15.3 In the event an Imposition is made directly upon Lessee, Lessee shall: (i) directly make and administer the appropriate payment, or (ii) finance and administer any protest of such Imposition, provided the protest does not interfere with the rights and operations of Qwest.
- 15.4 In the event an Imposition is made upon Qwest, either by audit or other means, that is solely the responsibility of Lessee and Lessee desires to protest such Imposition, Lessee shall submit to Qwest a statement of the issues and arguments requesting that Qwest grant Lessee the authority to prosecute the protest in Qwest's name. Qwest's authorization shall not be unreasonably withheld, and shall be periodically reviewed by Qwest to determine any adverse impact upon Qwest. In the event Qwest withdraws such authority, Lessee shall expeditiously terminate all proceedings. Lessee shall finance, manage, control and determine the strategy for such protest, keeping Qwest informed of the proceedings.
- 15.5 In the event Lessee's Imposition is included as part of a larger assessment made upon Qwest, ("Common Imposition") and either party desires to protest its respective portion of the Common Imposition, such party shall give written notice to the other party. The party receiving notice shall timely respond whether it desires to join in such protest. All joint protests shall be financed in proportion to each party's respective share of the protested amount, and any reduction in the Common Imposition shall be shared in the same ratio. All protests of Common Impositions shall be controlled and managed by Qwest with consideration given to the input by Lessee. In the event either party chooses not to participate in a protest of a Common Imposition, such party shall timely notify the other party of such decision. Thereafter, if the party desiring to protest chooses to proceed, such party shall be solely responsible for financing, controlling, managing, and determining the strategy of the protest. All reductions from the protest shall accrue to the benefit of the party financing such protest. If Qwest is the non-participating party in a protest of a Common Imposition, Lessee shall submit to Qwest a statement of the issues and arguments requesting that Qwest grant Lessee the authority to prosecute the protest

in Qwest's name. Qwest's authorization shall not be unreasonably withheld, and shall be periodically reviewed by Qwest to determine any adverse impact upon Qwest. In the event Qwest withdraws such authority, Lessee shall expeditiously terminate all proceedings. Lessee shall finance, manage, control and determine the strategy for such protest keeping Qwest informed of the proceedings.

16. NOTICE

16.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

- If to Qwest: Qwest Communications Corporation
 Attention: Senior Vice President – Wholesale Markets
 1801 California St. 24th Floor

Denver, Colorado 80202
 Telephone No.: (303) 992-1400
 Facsimile No.: (303) 992-1724

- with a copy to: Qwest Communications Corporation
 Attention: QwestLink PMO Director
 1801 California St. 24th Floor
 Denver, Colorado 80202
 Telephone No.: (303) 992-1400
 Facsimile No.: (303) 992-1776

- with a copy to: Qwest Communications Corporation
 Attention: Executive Vice President & General Counsel
 1801 California, Suite 4900
 Denver, Colorado 80202
 Telephone No.: (303) 992-1400
 Facsimile No.: (303) 295-6973

- If to Lessee: Qwest Corporation
 Attention: BRI (Procurement)
 Joyce Hoffman
 700 W. Mineral Ave.,
 OR.G8.18
 Littleton, CO 80120
 Telephone No.: 3037075204

- with a copy to: Qwest Communications Corporation
 Attention: Executive Vice President & General Counsel
 1801 California, Suite 4900
 Denver, Colorado 80202
 Telephone No.: (303) 992-1400
 Facsimile No.: (303) 295-6973

Billing: Qwest Corporation
 Helen Torrez
 700 W. Mineral Ave.,
 IA.C7.18
 Littleton, CO 80120
 Telephone No.: 3037078714

or at such other address as either party may designate from time to time in writing to the other party.

- 16.2 Except as otherwise provided herein, all required notices shall be in writing, transmitted to the parties' addresses specified in this Section, and will be considered given: (i) when delivered by facsimile, so long as duplicate notification is sent via overnight delivery; (ii) when delivered in person to the recipient named on the signature page; (iii) when deposited in either registered or certified U.S. Mail, return receipt requested, postage prepaid; or (iv) when delivered to an overnight courier service.

17. CONFIDENTIALITY

- 17.1 Qwest and Lessee agree that if either party (the "Disclosing party") provides confidential or proprietary information ("Proprietary Information") to the other party (the "Recipient party"), such Proprietary Information shall be held in confidence, and the Recipient party shall afford Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid its disclosure to or unauthorized use by any third party. All information disclosed by either party to the other in connection with or pursuant to this Agreement shall also be deemed to be Proprietary Information, provided that written information is clearly marked in a conspicuous place as confidential or proprietary, and verbal information is indicated as being confidential or proprietary when given or promptly confirmed in writing as such thereafter. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the Disclosing party and shall be used by the Recipient party only for its intended purpose. All Proprietary Information, including all copies thereof, shall be returned to the Disclosing party or destroyed after the Recipient party's need for it has ceased to exist or upon the request of the Disclosing party. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the Disclosing party.
- 17.2 The foregoing provisions of Section 17.1 shall not apply to any Proprietary Information which: (i) becomes publicly available other than through disclosure by the Recipient party; (ii) subject to Section 17.5 below, is required to be disclosed by law, rule or regulation, or by court order; (iii) is independently developed by the Recipient party; (iv) becomes available to the Recipient party without restriction from a third party; or (v) becomes relevant to the settlement of any dispute or enforcement of either party's rights under this Agreement in accordance with its terms and conditions. If any Proprietary Information is required to be disclosed pursuant to this Section, the party required to make such disclosure shall immediately inform the other party of the requirements of such disclosure and take all reasonable protective measures to preserve the confidentiality of such Proprietary Information as fully as possible in the context of such permitted disclosure.
- 17.3 Notwithstanding Sections 17.1 and 17.2, either party may disclose Proprietary Information to its employees, subcontractors or agents, its legal, financial, and accounting advisors, and to its lenders with a need to know such Proprietary Information, provided that the Disclosing party shall notify any recipient of its confidential and proprie-

tary nature and obtains, in advance, an agreement in writing from the recipient to be bound by the non-disclosure obligations of this Section.

17.4 Except as may be necessary for Qwest to perform its obligations hereunder, the parties expressly agree that they will keep the existence, substance and terms of this Agreement (including the negotiation thereof) strictly confidential. This Agreement and its terms and provisions constitute Proprietary Information as defined herein. The parties further agree that they will not communicate (orally or in writing) or in any way disclose the existence, substance, or terms of this Agreement (including the negotiation thereof) to any person, judicial or administrative agency or body, business, entity or association, or anyone else for any reason whatsoever, without the prior express written consent of the other party unless compelled to do so by law as described in Section 17.5 below. The parties agree that this Agreement and the negotiation thereof, and all matters related thereto, shall be subject to the Rule 408 of the Federal Rules of Evidence, and similar rules at the state level.

17.5 Notice of Disclosure.

(a) In the event either party has a legal obligation which requires disclosure of the terms and conditions of this Agreement or any Proprietary Information (including, without limitation, with the Securities and Exchange Commission or other regulatory agencies), the party having the obligation shall immediately notify the other party in writing of the nature, scope, and source of such obligation so as to enable the other party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement. At least ten (10) business days advance written notice under this Section 17 shall be provided to the other party, whenever possible.

(b) Notwithstanding anything to the contrary contained herein, in the event that Lessee commences a voluntary case under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) or consents to entry of an order for relief in an involuntary case, and Lessee files a motion (the "Section 365 Motion") or a plan of reorganization (the "Plan") seeking to assume or reject this Agreement under section 365 of the Bankruptcy Code, unless ordered by the court having jurisdiction over such bankruptcy case (the "Court") or otherwise required by applicable, non-bankruptcy law, it shall not attach to the Section 365 Motion or the Plan or this Agreement or describe in the Section 365 Motion or the Plan the details of this Agreement, unless, (a) prior to attaching this Agreement or any related agreements to a motion or plan of reorganization or otherwise disclosing the contents of the Agreement, Lessee shall use its best efforts to obtain entry of an order of the Court in form and substance reasonably acceptable to Qwest (i) authorizing the filing of this Agreement with the Clerk of the Court under seal, (ii) limiting the provision and dissemination of copies of this Agreement, marked "Highly Confidential Proprietary Information," to counsel for any official committees appointed in Lessee's bankruptcy case; to committee members on any such committee and to counsel for any banks or institutions that are parties to debtor-in-possession financing agreements, and to the United States Trustee and such other persons as the Court may direct, and (iii) prohibiting all such parties from disclosing the substance of such Agreement to any other person or entity or in open court without the consent of the parties or order of the Court obtained after a hearing held on reasonable notice to the parties; provided, however, that a copy of this Agreement may be disclosed to (i) the Court on a confidential basis in connection with obtaining any such order, and (ii) such persons, including, without limitation, any such official committees and their members and professionals as shall have executed and delivered to Lessee (with a copy simultaneously delivered to Qwest) a confidentiality agreement in form and substance reasonably acceptable to Qwest.

(c) Notwithstanding anything to the contrary contained herein, in the event that either party initiates or participates in an arbitration, litigation or other legal proceeding re-

lating to this Agreement other than as described in subsection (b) above, unless ordered by the presiding court or otherwise required by applicable, non-bankruptcy law, it shall not attach this Agreement to any filings, documents or disclosures provided in connection with such arbitration, litigation or legal proceeding, or describe the details of this Agreement in such filings, documents or disclosures unless, prior to attaching this Agreement thereto otherwise disclosing the contents of the Agreement, the party seeking to disclose the contents of this Agreement shall use its best efforts to obtain entry of an order of the court presiding over such litigation or proceeding or a ruling of the arbitrator in form and substance reasonably acceptable to the other party (i) authorizing the filing of this Agreement with the Clerk of the presiding court under seal or with the arbitrator, provided that the arbitrator has agreed to maintain the confidentiality thereof, (ii) limiting the provision and dissemination of copies of this Agreement and any related agreements, marked "Highly Confidential Proprietary Information," to opposing counsel in such arbitration, litigation or other proceeding and such other persons as the arbitrator or court may direct, and (iii) prohibiting all such parties from disclosing the substance of the Agreement to any other person or entity or in open court or in any other venue or medium without the consent of the parties or order of the court or ruling of the arbitrator obtained after a hearing held on reasonable notice to the parties; provided, however, that a copy or detailed description of this Agreement may be disclosed to (i) the court or arbitrator on a confidential basis in connection with obtaining any such order or ruling, and (ii) such persons as shall have executed and delivered to the party seeking disclosure (with a copy simultaneously delivered to the other party) a confidentiality agreement in form and substance reasonably acceptable to the non-disclosing party.

- 17.6 The provisions of this Section 17 shall survive for a period of two (2) years from the date of the expiration or termination of this Agreement. The parties agree that the provisions of this Section 17 are an essential element of this Agreement. The parties agree that a breach of this Section 17 will materially harm the other party in a manner that cannot be compensated by monetary damages, and that in the event of such breach the prerequisites for an injunction have been met.

18. DEFAULT

- 18.1 A party shall be in default under this Agreement upon the occurrence of an Event of Default. Upon the occurrence of an Event of Default, other than an Event of Default based upon non-payment of any amounts owed under this Agreement, the defaulting party shall have thirty (30) days after the non-defaulting party gives written notice of default to the defaulting party to cure the default (unless the default is waived in writing by the non-defaulting party within the thirty (30) day period). However, in such cases where a default cannot be cured within the thirty (30) day period by the exercise of diligent, commercially reasonable efforts, the party in default must cure the default within ninety (90) days after the non-defaulting party gives its notice. When an Event of Default arises from the non-payment of any amounts owed by the defaulting party, the non-defaulting party is not required to send a written notice of default to the defaulting party.
- 18.2 An Event of Default shall mean the following: (i) failure to make any payment under the terms of this Agreement within fifteen (15) days from the date payment is due; (ii) breach of any material provision; or (iii) Lessee is or becomes Insolvent.
- 18.3 In addition to the specific remedies provided in this Agreement, upon giving notice of default, the non-defaulting party may: (i) accelerate future lease payments (if any) through the remainder of the Term and recover such amounts from the Lessee; (ii) take any action it determines to be necessary to correct the default; and (iii) pursue any other legal or equitable remedies it may have under applicable law that are consistent with the terms of this Agreement.

19. TERMINATION

19.1 Either party may terminate this Agreement upon the failure of the other party to cure an Event of Default before the expiration of the applicable cure period, if any, as required by Section 18. In the event either party terminates this Agreement in its entirety or as to any portion of the System Route, the aggrieved party may, subject to the dispute resolution provisions herein, pursue any legal or equitable remedy available to it under applicable law, including, without limitation, accelerating future lease payments (if any) through the remainder of the Term and recovering such amounts from the Lessee.

19.2 The following sections shall survive the termination or expiration of the Agreement: 10 (Indemnification), 11 (Limitation of Liability, Disclaimer of Warranties), 15 (Taxes), 17 (Confidentiality), 21 (Arbitration), 26 (Publicity) and 28 (Personal Liability).

20. FORCE MAJEURE

20.1 Neither party shall be in default under this Agreement if its failure to perform is caused by any of the following conditions: act of God; fire; flood; sabotage; power outages; material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations, orders approvals or restrictions (collectively, "Regulations"); war or civil disorder; acts of terrorism; labor unrest or strike; failure of a third party to grant or recognize a required right-of-way permit, easement, Underlying Right, or other required authorization for use of the intended right-of-way; or any other cause beyond the commercially reasonable control of the affected party. The party claiming relief under this Section shall promptly notify the other in writing of the existence of the force majeure event relied upon and the cessation or termination of that event. For the duration of any valid force majeure event, the performance or nonperformance of the affected party shall be excused.

21. ARBITRATION

21.1 The parties shall attempt in good faith to promptly resolve any dispute arising out of or relating to this Agreement by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after the giving of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include: (a) a statement of each party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

21.2 Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by negotiation pursuant to Section 21.1 within ninety (90) days of the initiation of such procedure, shall be resolved by arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules, but need not be administered by JAMS unless the parties cannot otherwise agree upon the selection of an arbitrator within thirty (30) days of the receipt of a written demand for arbitration. In the event the parties cannot reach agreement on the selection of an arbitrator, either party may commence the arbitration process by filing a written demand

either party may commence the arbitration process by filing a written demand for arbitration with JAMS, with a copy to the other party. The written demand for arbitration called for by this paragraph shall contain sufficient detail regarding the party's claims to permit the other party to understand the claims and identify witnesses and relevant documents.

The arbitrator may, upon good cause shown, expand the discovery permitted by the JAMS rules and enlarge any applicable deadlines. The arbitrator may decide a motion for summary disposition of claims or issues, either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request. The arbitrator shall not have the authority to determine claims over which a regulatory agency has exclusive jurisdiction. The arbitrator shall not be empowered to award, nor shall any party be entitled to receive, punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits or any other charges excluded from this Agreement. The arbitrator's decision shall follow the plain meaning of this Agreement and related documents and shall be final, binding, and enforceable in a court of competent jurisdiction. The arbitrator shall issue an award no later than sixty (60) days after the commencement of the arbitration hearing unless the parties agree otherwise. Each party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver, Colorado metropolitan area.

Should it become necessary to resort to court proceedings to enforce a party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorneys fees, incurred by the party requesting such enforcement shall be reimbursed to that party by the non-complying party.

21.3 The parties agree to keep confidential all disputes arising under this contract except as necessary in connection with a judicial challenge to or enforcement of an award or unless otherwise required by law or judicial decision. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

21.4 The obligation to negotiate or arbitrate shall not be binding upon any party with respect to requests for preliminary injunctions, temporary restraining orders or other similar temporary procedures in a court of competent jurisdiction, when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute. It is not the intention of the parties that such procedures for interim relief shall be in lieu of, or cause substantial delay to, any negotiation or arbitration proceeding commenced under Section 21.1 or 21.2 above.

22. WAIVER

22.1 The failure of either party to enforce any provision of this Agreement, or conduct by a party that purports to waive any provision, shall not be construed as a general or specific waiver or relinquishment of any provision of this Agreement. A waiver of any provision of or right or obligation arising under this Agreement shall be valid only if in writing and executed by an authorized representative of the waiving party, specifically identifying the subject of the waiver, and clearly and unequivocally waiving the provision, right or obligation that is the subject of the waiver.

23. GOVERNING LAW

23.1 This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the substantive laws of the state of New York without regard to any choice of law rules that would require the application of the law of

any other jurisdiction. The lease of the Leased Fibers shall be governed by Article 2A of the New York Uniform Commercial Code. In addition, the parties agree that should any issue of interpretation of this Agreement which is not resolved by the specific terms hereof shall be resolved pursuant to Article 2A of the New York Uniform Commercial Code.

24. RULES OF CONSTRUCTION

- 24.1 The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.
- 24.2 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- 24.3 Except as set forth to the contrary herein, any right or remedy of Lessee or Qwest shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 24.4 This Agreement has been fully negotiated between and jointly drafted by the parties, each of whom had full opportunity to consult with counsel before execution.
- 24.5 In the event of a conflict between the provisions of this Agreement and those of any Addendum or Exhibit, the provisions of this Agreement shall prevail and such Addendum or Exhibit shall be corrected accordingly.
- 24.6 All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date certain or within a time period specified herein. Except as specifically set forth herein, for the purpose of this Section the normal standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a party's performance is reasonable and timely.

25. REPRESENTATIONS

- 25.1 Each party represents that:
- (a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and this Agreement does not violate, conflict with, or otherwise constitute a breach of any agreement or arrangement to which it is a party or by which it is bound;
- (b) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and
- (c) At the time of execution, this Agreement does not violate any applicable existing state or federal law.

26. PUBLICITY, NAME AND MARKS

26.1 No publicity regarding the existence and/or terms of this Agreement may occur without either party's prior express written consent, and such written consent, if granted, may be granted only by Qwest's Chief Marketing Officer or his designee. The content and timing of any press releases and all other publicity regarding the subject matter of this Agreement or Lessee's relationship with Qwest, if authorized, shall be mutually agreed upon by the parties in advance. Notwithstanding anything to the contrary herein, neither party may make any disclosure to any other person or any public announcement regarding the existence and the terms of this Agreement or any relationship between Lessee and Qwest, without the other party's prior written consent. In addition, neither party shall use any trademark, service mark, brand name, copyright, patent, trade secret or any other intellectual property of the other party or its respective Affiliates without the other party's prior written consent and in the case of Qwest, without the prior written consent of the Chief Marketing Officer or his designee.

27. ASSIGNMENT

27.1 This Agreement shall be binding on Lessee and its respective Affiliates, successors, and assigns. Lessee shall not assign, sell or transfer this Agreement or the right to receive the lease hereunder, whether by operation of law or otherwise, without the prior written consent of Qwest. Any attempted assignment in violation hereof shall be null and void.

28. NO PERSONAL LIABILITY

28.1 Each action or claim against any party arising under or relating to this Agreement shall be made only against such party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer or director of the other party.

29. RELATIONSHIP OF THE PARTIES

29.1 The relationship between Lessee and Qwest shall not be that of partners, agents, or joint venturers. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or agency agreement between the parties for any purposes, including but not limited to federal income tax purposes. Lessee and Qwest, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

30. NO THIRD PARTY BENEFICIARIES

30.1 This Agreement does not provide, and is not intended to provide, any third party beneficiaries, including, but not limited to, Lessee's end users or customers, with any remedy, claim, reimbursement, cause of action or other right or privilege.

31. SEVERABILITY

31.1 If any term, covenant or condition contained herein shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

32. COUNTERPARTS

32.1 This Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument. Facsimile signatures shall be treated as original signatures for the purpose of enforcing this Agreement. The parties agree to exchange original signature pages as soon as practicable following exchange of the facsimile signature pages (if that occurs), but the original signatures are not required in order to enforce the Agreement.

33. ENTIRE AGREEMENT; AMENDMENT


33.1 This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, relating to the subject matter hereof, which are of no further force or effect.

33.2 The Addendum and Exhibits referred to herein are integral parts hereof and are made a part of this Agreement.

33.3 This Agreement may only be modified or supplemented by an instrument in writing that is executed by a duly authorized representative of each party.

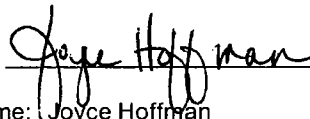
In confirmation of their consent and agreement to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written.

QWEST COMMUNICATIONS CORPORATION

By:  _____

Name: Roland R. Thornton
Title: Vice President, Customer Service Operations

**Qwest Business Resources, Inc. as agent for
QWEST CORPORATION**

By:  _____

Name: Joyce Hoffman
Title: Strategic Sourcing Manager

6/21/04

**ADDENDUM 1:
DEFINITIONS**

The following terms shall have the meanings set forth in this Addendum when used in this Agreement, unless explicitly stated to the contrary:

"Affiliate" means: (i) any individual, corporation, partnership, limited liability company, limited liability partnership, practice, association, joint stock company, trust, unincorporated organization or other venture or business vehicle (each an "Entity") in which a party owns a twenty percent (20%) or greater equity interest; or (ii) any Entity which, directly or indirectly, is in Control of, is Controlled by or is under common Control with a party, as applicable, after applying the attribution rules of Section 318 of the U.S. Internal Revenue Code. For the purpose of this definition, "Control" of an Entity shall also include the power, directly or indirectly, whether or not exercised to vote fifty percent (50%) (or such lesser percentage as is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) or more of the securities or other interests having ordinary voting power for the election of directors or other managing authority of such Entity.

"Collateral" is defined in Section 14.1 herein.

"Connecting Points" means the mutually agreed upon splice points in Qwest manholes, handholes, or fiber distribution panels which can be used to access the Leased Fibers.

"Costs" means all actual, direct costs paid or payable in accordance with the established accounting procedures generally used by Qwest and which it utilizes in billing third parties for reimbursable projects which costs shall include, without limitation, the following: (i) internal labor costs, including wages and salaries, and benefits, and overhead allocable to such labor costs, and (ii) other direct costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies, contract services, etc.).

"Cross-Connect Panel" means the piece of equipment designated by Qwest in a Qwest POP at which the Leased Fibers are terminated and at which location Lessee may have access to and interconnect with the Leased Fibers through use of Local Distribution Facilities or other facilities acceptable to Qwest.

"Deliver" or "Delivery" of Leased Fibers and Leased Fibers "Delivered" mean that the applicable Leased Fibers will be available for use at the Cross-Connect Panels designated by Qwest hereunder.

"Disclosing party" is defined in Section 17.1 herein.

"Event of Default" is defined in Section 18.2 herein.

"Effective Date" is defined in the first paragraph of this Agreement.

"Fiber Acceptance Test" is defined in Section 4.2 herein.

"Impositions" means all taxes, fees, levies, imposts, duties, contributions, withholdings or charges of a similar nature (including, without limitation, sales and use taxes), assessed by any federal, state or local government or taxing authority by reason of the lease transaction entered into pursuant to this Agreement assessed for any period during the Term of the Agreement and subsequent to the Effective Date. Impositions shall also include any penalties, fines, or interest thereon. Specifically excluded from such term are all taxes based upon ownership, including, without limitation, property taxes and other taxes the measure of which is net income or net worth.

"Insolvent" means the occurrence of any of the following events, whereby Lessee (i) becomes or is declared insolvent or files a petition under Title 11 of the United States Code or is subject to an order for relief thereunder; (ii) is the subject of any proceedings related to its liquidation, insolvency or for the ap-

pointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations.

"Interest Holder" is defined in Section 2.8(b) of Exhibit B herein.

"Leased Fibers" means the specific dark fibers described in Exhibit A.

"Local Distribution Facilities" means those telecommunications transmission facilities that interconnect with the applicable Leased Fibers at a Cross-Connect Panel and extend each System Route of the applicable Leased Fibers to a location outside of the Qwest POP.

"OC" means the Qwest's Operation Center as described in Section 2.3(a) of Exhibit B herein.

"Outage" is defined in Section 2.8(a) of Exhibit B herein.

"Planned System Work Period" or "PSWP" means a prearranged period of time reserved for performing certain work on the Qwest Network that may potentially impact traffic. Generally, this will be restricted to weekends, avoiding the first and last weekend of each month and high-traffic weekends. The PSWP shall be agreed upon pursuant to Exhibit B.

"POP" means the Qwest terminal facility (point of presence) where the Leased Fibers are Delivered to Lessee.

"Proprietary Information" is defined in Section 17.1 herein.

"Qwest Network" means the fiber optic telecommunications network operated by Qwest in the United States, including at the election of Qwest, such telecommunications capacity as Qwest may obtain from another network provider and integrate into its own network for purposes of providing services or leased fibers to its customers. Although Qwest possesses telecommunications network facilities and capacity in locations other than the United States, such network facilities and capacity are not part of the Qwest Network for purposes of this Agreement.

"Recipient party" is defined in Section 17.1 herein.

"Regulations" is defined in Section 20.1 herein.

"Scheduled Maintenance" is defined in Section 2.2(a) of Exhibit B herein.

"System Route" means the physical route along which the Leased Fibers are placed by Qwest on the Qwest Network, as more particularly described in Exhibit A hereto. For maintenance purposes only, Qwest reserves the right to alter temporarily each applicable System Route, provided that such alterations do not result in changes to the endpoints (POPs) of the applicable System Route.

"Term" is defined in Section 5.1 herein.

"Underlying Rights" means certain rights of way and other agreements obtained by Qwest for construction and operation of the Qwest Network in accordance with this Agreement.

"Unscheduled Maintenance" is defined in Section 2.2(b) of Exhibit B herein and consists of Emergency Unscheduled Maintenance and Non-Emergency Unscheduled Maintenance.

**EXHIBIT A:
DESCRIPTION OF SYSTEM ROUTE IN QWEST NETWORK**

Number of Leased Fibers	Qwest POP A (Address)	Qwest POP B (Address)	Route Miles	Lease Fee
2	California bank building (707 Washington) Portland, OR	MH at Allen St in Kelso, WA (MP#5 sta county road 38+22 as built page 5-3)	49.6	\$40,476/ year

**EXHIBIT B:
TECHNICAL SPECIFICATIONS**

1.0 FIBER CABLE SPLICING, TESTING AND ACCEPTANCE PROCEDURES

1.1 All splices will be performed with an industry-accepted fusion-splicing machine.

1.2 Splice loss acceptance testing will be provided as follows:

(a) Qwest will provide a Bi-directional Splice Loss Report for each individual splice, in a span of fiber optic cable, from FDP to FDP, or from FDP to bare end of cable, which ever applies. This report will provide the actual splice loss (calculated by averaging the uni-directional readings from each direction) of each individual splice, on each individual fiber, in the given fiber optic cable span. There is no maximum attenuation specification for an individual splice.

(b) Qwest will also provide a Fiber Acceptance Report, containing the bi-directional splice loss span average for all the splices in each individual fiber, in a given span of fiber optic cable. The actual splice loss span average for each fiber in a span will not exceed .15dB. All splice loss testing will be performed at 1550nm wavelength.

1.3 Power Loss Span Testing will be provided as follows:

(a) All power loss readings will be bi-directional at 1550nm wavelength.

(b) Qwest will provide end-to-end power loss test readings for each fiber, in each fiber optic cable span, from FDP to FDP, using the Qwest Bi-directional Power Loss Data Report.

(c) Power loss readings will be measured in decibels, and qualified by comparison to the calculated, maximum expected loss, in decibels, of the fiber optic cable span. The power loss test readings shall not exceed the calculated maximum expected loss of the fiber optic cable span under test. The maximum expected loss will be calculated by the following formula;

$(\text{Span length in kilometers} \times .25\text{dB/km}) + (\text{number of splices} \times .15\text{dB}) + (.50\text{dB} \times \text{number of mated pair of connectors}) = \text{maximum expected span loss in decibels.}$

1.4 Optical Return Loss (ORL), as calculated by an OTDR, will be provided on the Fiber Acceptance Report.

1.5 The entire fiber optic cable system shall be properly protected from foreign voltage and grounded with an industry-accepted system. The current systems in use by Qwest are the ACT 4400-150 and the Norscan 2745 SGU.

1.6 The fibers shall be terminated to the FDP, if any, with FC-UPC connectors, unless another type of connector is specified.

2.0 MAINTENANCE SPECIFICATIONS AND PROCEDURES

2.1 All other terms not otherwise defined herein shall have their respective meanings as set forth in the Agreement of which this Exhibit forms a part.

2.2 Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair of the Leased Fibers described in this section ("Scheduled Maintenance") shall be performed by or under the direction of Qwest, at Qwest's reasonable discretion or at Lessee's request. Scheduled Maintenance of a

Leased Fiber segment shall commence when Lessee executes an acceptance letter of that segment. Scheduled Maintenance shall include the following activities:

- 1) Patrol of System Route on a regularly scheduled basis, which will be weekly unless hyrail access is necessary, in which case, it will be quarterly;
- 2) Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates;
- 3) Maintenance of sign posts along the System Route right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for Qwest's "Call-Before-You-Dig" program; and
- 4) Assignment of fiber maintenance technicians to locations along the System Route at approximately 100-mile intervals dependent upon terrain and accessibility.

(b) **Unscheduled Maintenance.** Non-routine maintenance and repair of the Leased Fibers that is not included as Scheduled Maintenance ("Unscheduled_Maintenance"), shall be performed by or under the direction of Qwest. Unscheduled Maintenance of a Leased Fiber segment shall commence when Lessee executes an acceptance letter of that segment. Unscheduled Maintenance shall consist of:

- 1) "Emergency Unscheduled Maintenance" in response to an alarm identification by Qwest's Operations Center, notification by Lessee or notification by any third party of any failure, interruption or impairment in the operation of the Leased Fibers, or any event imminently likely to cause the failure, interruption or impairment in the operation of the Leased Fibers.
- 2) "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the Qwest System.

(c) Lessee shall immediately report the need for Unscheduled Maintenance to Qwest in accordance with procedures promulgated by Qwest from time-to-time. Qwest will log the time of Lessee's report, verify the problem and dispatch personnel immediately to take corrective action.

2.3 Operations Center.

(a) Qwest shall operate and maintain an Operations Center ("OC") staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel. Qwest's maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Qwest shall have its first maintenance employee at the site requiring Emergency Unscheduled Maintenance activity within two (2) hours after the time Qwest becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Qwest. Qwest shall maintain a toll-free telephone number to contact personnel at the OC. Qwest's OC personnel shall dispatch maintenance and repair personnel along the system to handle and repair problems detected in the Leased Fibers, (i) through the Lessee's remote surveillance equipment and upon notification by Lessee to Qwest, or (ii) upon notification by a third party.

2.4 Cooperation and Coordination.

(a) Lessee shall utilize an operations escalation list, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Qwest in meeting maintenance service objectives.

(b) Lessee will, as necessary, arrange for unescorted access for Qwest to all Leased Fibers sites in the System Route, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In performing its services hereunder, Qwest shall take reasonable care to prevent impairment to the signal continuity and performance of the Leased Fibers. The precautions to be taken by Qwest shall include notifications to Lessee. In addition, Qwest shall reasonably cooperate with Lessee in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Lessee, then Lessee shall, at Qwest's reasonable request, make such personnel of Lessee available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Qwest in performing such maintenance as required of Qwest hereunder.

(d) Qwest shall use its best efforts to notify Lessee at least ten (10) business days prior to the date in connection with any PSWP of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Lessee shall have the right to be present during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Qwest's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Qwest shall use its best efforts to notify Lessee at Qwest's earliest opportunity, and will comply with the provisions of the previous sentence to re-schedule any delayed activity.

2.5 Facilities.

(a) Except to the extent otherwise expressly provided in the Agreement, Lessee will be solely responsible for providing and paying for any and all maintenance of all electronic, optoelectronic and other equipment, materials and facilities used by Lessee in connection with the operation of the Leased Fibers, none of which is included in the maintenance services to be provided hereunder.

2.6 Cable/Fibers.

(a) Qwest shall perform appropriate Scheduled Maintenance on the cable contained in the System Route in accordance with Qwest's then current preventative maintenance procedures.

(b) Qwest shall have qualified representatives on site any time Qwest has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the cable.

(c) Qwest shall use commercially reasonable efforts to maintain sufficient capability to teleconference with Lessee during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Qwest shall use reasonable efforts to repair traffic-affecting discontinuity within four (4) hours after the Qwest maintenance employee's arrival at the problem site. In order to accomplish

such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Qwest shall commence its planning for permanent repair, and thereafter promptly shall notify Lessee of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available Planned Service Work Period (PSWP).

(d) In performing repairs, Qwest shall comply with the splicing specifications as set forth in Section 1.0 of this Exhibit. Qwest shall provide to Lessee any modifications to these specifications as may be necessary or appropriate.

(e) Qwest's representatives that are responsible for initial restoration of a cut cable shall carry on their vehicles the typically appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible.

2.7 Planned Service Work Period (PSWP).

(a) Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends. The intent is to avoid, to the extent commercially reasonable, jeopardy work on the first and last weekends of the month and high-traffic holidays.

2.8 Restoration.

(a) Qwest shall respond to any interruption of service or a failure of the Leased Fibers to operate in accordance with the specifications set forth in this Exhibit (in any event, an "Outage") as quickly as reasonably possible (allowing for delays caused by circumstances beyond the reasonable control of Qwest) in accordance with the procedures set forth herein.

(b) When restoring a cut cable in the System Route, the parties agree to work together to restore all traffic as quickly as possible. Qwest, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Qwest shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, rotating between tubes or ribbons operated by the separate Interest Holders, including Lessee, in accordance with the following described priority and rotation mechanics; provided that, lit fibers in all buffer tubes or ribbons or fiber bundles shall have priority over any dark fibers in order to allow transmission systems to come back on line; and provided further that, Qwest will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. For the purpose of this Exhibit, the term "Interest Holder" means any party who leases, owns, or has a right to use fibers on the System Route. In general, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration and segment-by-segment basis, to provide fair and equitable restoration priority to all Interest Holders, subject only to such restoration priority to which Qwest is contractually obligated prior to the date of the Agreement. Qwest shall use all reasonable efforts to implement a Qwest Network-wide rotation mechanism on a segment-by-segment basis so that the initial rotation order of the Interest Holders in each segment is varied (from earlier to later in the order), such that as restorations occur, each Interest Holder has approximately equivalent rotation order positions across the Qwest Network. Additional participants in the Qwest Network that become Interest Holders after the date hereof shall be added to the restoration rotation mechanism.

(c) The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M Fiber

Lock" to complete the temporary restoration. Permanent restorations will take place as soon as possible after the temporary splice is complete.

2.9 Subcontracting.

(a) Qwest may subcontract any of the maintenance services hereunder; provided that Qwest shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Qwest of any of its obligations hereunder.

2.10 Fees and Costs.

(a) Scheduled Maintenance Fees. The fees payable for any and all Scheduled Maintenance hereunder are included in the Lease Fee.

(b) Unscheduled Maintenance Fees. If the aggregate amount of the Costs of Unscheduled Maintenance required as a result of any single event or multiple, closely-related events is less than Five Thousand Dollars (\$5,000.00), such Costs shall be borne by Qwest. For any other Unscheduled Maintenance, the Costs thereof shall be allocated among the various Interest Holders in the conduit, cable an/or fibers affected thereby as follows: (i) Costs of Unscheduled Maintenance solely to or affecting a conduit or cable which houses fibers of a single Interest Holder shall be borne 100% by such Interest Holder; (ii) Costs of Unscheduled Maintenance to or affecting a conduit which houses multiple innerduct conduits, not including such Costs attributable to the repair or replacement of fiber therein, shall be borne proportionately by the Interest Holders in each of the affected innerduct conduits based on the ratio that such affected conduit bears to the total number of affected innerduct conduits, and (iii) Costs of Unscheduled Maintenance attributable to the repair or replacement of fiber, including the acquisition, installation, inspection, testing and splicing thereof, shall be borne proportionately by the Interest Holders in the affected fiber, based on the ratio that the number of affected fibers subject to the interest of each such Interest Holder bears to the total number of affected fibers. All such Costs that are allocated to Lessee pursuant to the foregoing provisions shall be the responsibility of and paid by Lessee within thirty (30) days after the date of Qwest's invoice therefor.

2.11 Term.

(a) Qwest's obligation to perform maintenance on the relevant portion of the Qwest Network shall be for the Term.