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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of :
QWEST CORPORATION for Approval of : Docket No. 00-049-08
Compliance with 47 U.S.C. § 271(d)(2)(B) :

**QWEST CORPORATION’S NOTICE OF UPDATED SECTION 10.8 AND
EXHIBIT D TO STATEMENT OF GENERALLY AVAILABLE TERMS
AND CONDITIONS TO COMPLY WITH COMMISSION ORDERS**

Qwest Corporation (“Qwest”) submits this notice in support of its updated Section 10.8 and Exhibit D to its Statement of Generally Available Terms and Conditions (“SGAT”) developed in compliance with orders issued on May 25, 2001, September 18, 2001, and April 26, 2002, by the Public Service Commission of Utah (“Commission”) in this Docket relating to Disputed Issue Number Three (Access to Landowner Agreements) under Checklist Item 3 (Access to Poles, Ducts, Conduits

and Rights-of-Way) under section 271 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, *et seq.* (the “Act”).

As explained below, all of the revisions to Section 10.8 and Exhibit D to the SGAT set forth in the attached exhibits comply with the Commission’s Orders and represent consensus language of the parties. With these revisions, there are no outstanding issues relating to Checklist Item 3 in the state of Utah. Accordingly, the Commission should adopt the revisions and conclude that Qwest satisfies all requirements of Checklist Item 3 under the Act.

I. BACKGROUND

The SGAT modifications set forth in the attached exhibits (the “landowner agreement access package” or “package”) relate to CLEC access to non-recorded right-of-way agreements, including agreements relating to multiple tenant environments (“MTEs”), between Qwest and third-party property owners in Utah. The Commission has issued three orders addressing issues relating to this issue – May 25, 2001, September 18, 2001, and April 26, 2002 (collectively, the “MTE/ROW Orders”).

Through their good faith discussions, the parties have been able to agree on all aspects of the landowner agreement access package to comply with the Commission’s MTE/ROW Orders. The revisions set forth in the attached exhibits reflect the parties’ agreement and include changes made to Section 10.8 and Exhibit D of the SGAT to comply with the latest of the MTE/ROW Orders¹ and to standardize usage throughout Section 10.8 and Exhibit D.

¹ The highlighted and annotated revisions reflect changes made to the SGAT from the SGAT currently on file with the Commission – the “Fifth Revision” dated April 10, 2002. That version of the

II. DISCUSSION

In addition to those changes made to the SGAT to comply with the Commission's May 25, 2001 and September 18, 2001 orders, in the April 26, 2002 Order, the Commission ordered further revisions relating to four issues. As explained below, the parties have agreed on language implementing each of these four areas of changes.

First, the Commission directed the parties to include language in the SGAT to allow CLECs in Utah to choose in advance as a "default" which of three available "methods"² to use in order to have access to non-recorded agreements between Qwest and third-party owners of multiple tenant environments ("MTEs") in Utah which contain confidentiality provisions in favor of the landowner.³ In addition, the Commission concluded that CLECs should be required to satisfy only one of those conditions.⁴ The agreed-to language of Section 10.8.2.27.2 implements the Commission's directives on this issue. It provides:

CLEC must satisfy only one of the conditions set forth in this Section. CLEC's election of the specific condition to satisfy remains at all times within its sole discretion. CLEC may specify at the time it executes this Agreement its election of the means by which it chooses to satisfy the conditions of this Section for all agreements CLEC may request during the term of this Agreement.⁵

SGAT already incorporated changes made to comply with the first two (May 25 and September 18, 2001) of the MTE/ROW Orders.

² The three possible "methods" of access are: (1) consent from the property owner; (2) indemnification of Qwest; and (3) execution of a form protective agreement. *See* SGAT § 10.8.2.27.2.

³ *See* April 26, 2002 Order at 1-2.

⁴ *See id.* at 2.

⁵ *See also* SGAT Exhibit D § 2.1.

Second, the Commission ordered the inclusion of language in the SGAT “delineat[ing] the time period that Qwest has to respond to an information request.”⁶ Section 10.8.2.27.1.2 provides that to the extent the CLEC has already satisfied one of the conditions of disclosure (consent, indemnification, or protective agreement), the information regarding the agreement at issue will be provided “at the time Qwest provides the MTE Matrix or ROW Matrix, as applicable.”⁷ Under Section 10.8.2.27.1, the matrices are to be provided within ten days of receipt of a completed Attachment 1.A. To the extent that a CLEC has not previously elected and satisfied one of the conditions, the information will not be supplied with the matrices but will be supplied “within three business days after the CLEC satisfies one of the conditions.”⁸

Third, the Commission directed the parties to “specify the type of information” to be provided to CLECs in cases where the agreement between Qwest and the MTE “grants confidentiality to the landowner.”⁹ Section 10.8.2.27.1.2 provides the list of information to be supplied to CLECs under such circumstances:

(a) the ownership or control over ducts, conduits, or rights-of-way within the property described in the agreement, including provisions which define the scope of Qwest’s ownership or control of the ducts, conduits or rights-of-way; (b) the ownership of wire within the property described in the agreement; (c) the demarcation point between Qwest facilities and the property owner’s facilities in the property described in the agreement; (d) to the extent the agreement affects any property interest of a third-party owner, any provision(s) that describe the property, including any metes

⁶ April 26, 2002 Order at 2.

⁷ *See also* SGAT Exhibit D § 2.1.

⁸ *See* SGAT § 10.8.2.27.1.2; *see also* SGAT Exhibit D § 2.1.

⁹ April 26, 2002 Order at 3.

and bound or other legal description of the property; (e) the term of the agreement; and (f) the parties to the agreement.¹⁰

Fourth, the Commission ordered that the SGAT obligate Qwest to “provide a photocopy of the specific provision that grants the landowner confidentiality rights.”¹¹ Section 10.8.2.27.1.2 complies with this provision of the Commission’s order:

Qwest shall also provide a copy of the specific provision from such agreement affording the third party property owner confidentiality together with a written statement signed by a Qwest employee verifying that such employee knows such provision to be a true and correct copy from the agreement.¹²

In sum, the attached SGAT language for Section 10.8 and Exhibit D fully complies with all of the Commission’s MTE/ROW Orders. The language is consensus language agreed to by the parties and should be adopted. With these changes, the Commission should make a finding that Qwest satisfies the requirements of Checklist Item 3 under section 271 of the Act.

III. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Commission should adopt the revised SGAT language filed with this notice and conclude that Qwest has complied with all of the Commission’s orders relating to Checklist Item 3 and, therefore, satisfies all of the requirements of the checklist item under the Act.

¹⁰ *See also* SGAT, Exhibit D § 2.1.

¹¹ April 26, 2002 Order at 3.

¹² *See also* SGAT Exhibit D § 2.1.

DATED: June 6, 2002.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **QWEST CORPORATION'S NOTICE OF UPDATED SECTION 10.8 AND EXHIBIT D TO STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS TO COMPLY WITH COMMISSION ORDERS** was served upon all parties on the service list for this docket by electronic mail on June 20, 2002.
