

**STATEMENT OF GENERALLY AVAILABLE
TERMS AND CONDITIONS FOR INTERCONNECTION,
UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES,
AND RESALE OF TELECOMMUNICATION SERVICES
PROVIDED BY
QWEST CORPORATION
IN THE STATE OF**

UTAH

**COMPLIANCE SGAT LITE
June 6, 2002**

***With revisions made to comply with orders of the Utah Public Service
Commission issued on April 26, 2002, September 18, 2001, and May 25, 2001, In
the Matter of the Application of Qwest Corporation, for Approval of Compliance
with 47 U.S.C. § 271(d)(2)(B), Dkt. No. 00-049-08***

Revisions made using the SGAT (FIFTH REVISION) filed on April 10, 2002

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

10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term pole attachment means any attachment by CLEC to a pole owned or controlled by Qwest.

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

10.8.1.2.1 The terms duct and conduit mean a single enclosed raceway for conductors, cable and/or wire. Duct and conduit may be in the ground, may follow streets, bridges, public or private ROW or may be within some portion of a ~~multi-unit building~~ multiple tenant environment. Within a multiple tenant environment ~~multi-unit building~~, duct and conduit may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser. The terms Duct and Conduit include riser conduit.¹

10.8.1.2.2 The term innerduct means a duct-like raceway smaller than a duct/conduit that is inserted into a duct/conduit so that the duct may typically carry three cables.

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing Telecommunications facilities. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multiple tenant environments ~~multi-unit buildings~~.²

¹ These changes reflect post-workshop consensus language that complies with orders of the Utah Public Service Commission issued on April 26, 2002, September 18, 2001, and May 25, 2001, *In the Matter of the Application of Qwest Corporation, fka US WEST Communications, Inc., for Approval of Compliance with 47 U.S.C. §271(d)(2)(B)*, Dkt. No. 00-049-08 (hereafter collectively referred to as "Utah MTE/ROW Orders").

² These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place Telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter ~~multiple tenant environments~~~~multi-unit buildings~~. Within a ~~multiple tenant environment~~~~multi-unit building~~, a ROW includes a pathway that is actually used or has been specifically designated for use by Qwest as part of its transmission and distribution network where the boundaries of the pathway are clearly defined either by written specifications or unambiguous physical demarcation.³

10.8.1.4 Intentionally Left Blank.

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to (i) convey an interest in real or personal property, or (ii) afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or through Applicable Rules as defined in this Agreement.

10.8.2 Terms and Conditions

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Duct/Innerduct Occupancy General Information Document, attached hereto as Exhibit D. Qwest will not favor itself over CLEC when Provisioning access to poles, ducts, conduits and rights of way (ROW). Qwest shall not give itself preference when assigning space.

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

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

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

10.8.2.4 CLEC shall provide access to a map of the requested poles/duct/innerduct/ROW route, including estimated distances between major points, the identification and location of the poles/duct/innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a Bona

³ These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

Fide Request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed forty-five (45) calendar Days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any poles/duct/innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on poles/duct/innerduct, duct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on poles, innerduct, duct/conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order (Make-Ready fee). When modifications to a Qwest spare duct/conduit include the placement of innerduct, Qwest or CLEC will install the number of innerduct required to fill the duct/conduit to its full capacity.

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

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

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

10.8.2.10 Replacement/Modification/Installation - If CLEC requests Qwest to replace or modify existing poles/duct/innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new poles/duct/innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced poles/duct/innerduct, if necessary. Ownership of new poles/duct/innerduct shall vest to Qwest.

10.8.2.10.1 Upon request, Qwest shall permit CLEC to install poles/duct/innerduct. Qwest reserves the right to reject any non-conforming replacement pole/duct/innerduct installed by CLEC that do not conform to the NESC, OSHA or local ordinances.

10.8.2.10.2 To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its Affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification.

10.8.2.10.3 The modifying party or parties may recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher will be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. The modifying party or parties seeking to recover modification costs from parties that later obtain attachments shall be responsible for maintaining all records regarding modification costs. Qwest shall not be responsible for maintaining records regarding modification costs on behalf of attaching entities.

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

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the poles/duct/innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, poles/duct/innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said poles/duct/innerduct or ROW system and CLEC shall remove its facilities from said poles/duct/innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and

CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the poles/duct/innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

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

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

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

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.4.4, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the poles/duct/innerduct within sixty (60) calendar Days, or cause Qwest to remove its facilities from the poles/duct/innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any Applicable Law or in aid of any unlawful act or making an unauthorized modification to Qwest's poles/duct/innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Access Agreement by which Qwest conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any poles/innerduct, duct/conduit or ROW at any time by giving written notice to CLEC. Any poles, innerduct, duct/conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of poles/innerduct, duct/conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar Days of such notice, either:

1) continue to occupy the poles/innerduct, duct/conduit or ROW pursuant to its existing rights under this Agreement if the poles/innerduct, duct/conduit, or ROW is purchased by another party; 2) purchase the poles/innerduct, duct/conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar Days shall be deemed an election to purchase the poles/innerduct, duct/conduit or ROW at the current market value if no other party purchased the poles/innerduct, duct/conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Telcordia Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest, its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

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

10.8.2.22 If any facilities are found attached to poles/duct/innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay the lesser of (a) the annual fee per pole or per innerduct run between two (2) manholes for the number of years since the most recent inventory, or (b) five times the annual fee per pole or per innerduct run between two (2) manholes. In addition, CLEC agrees to pay (a) interest on these fees at a rate set for the applicable time period by the Internal Revenue Service for individual underpayments pursuant to Section 6621 of the Internal Revenue Service Code (25 U.S.C. § 6621, Rev. Rul. 2000-30, 2000-25 IRS 1262), and (b) the cost of any audit required to identify unauthorized CLEC attachments. Qwest shall waive half the unauthorized attachment fee if the following conditions are met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC, (3) CLEC reimburses Qwest for cost of audit, or portion thereof, which discovered the unauthorized attachment. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a poles/duct/innerduct

application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar Days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

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

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

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

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

10.8.2.27 For purposes of permitting CLEC to determine whether Qwest has ownership or control over duct/conduit or ROW, including duct/conduit or ROW within a specific multiple tenant environmentmulti-dwelling-unit, if CLEC requests a copy of an agreement between Qwest and the owner of a specific-duct/conduit or ROW, including duct/conduit or ROW within a specific multiple tenant environmentmulti-dwelling-unit, that grants Qwest access to, ownership of, or control of duct/conduit or ROW, including duct/conduit or ROW within a specific multiple tenant environmentthe-multi-dwelling-unit, Qwest will provide the agreement to CLEC pursuant to the terms of this Section. CLEC will submit a completed Attachment 1.A from Exhibit D that identifies a specific multiple tenant environmentmulti-unit dwelling or route for each agreement.⁴

⁴ These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

10.8.2.27.1 Upon receipt of a completed Attachment 1.A, Qwest will prepare and return an MTE Matrix or ROW Matrix, as applicable, MDU information matrix, within ten (10) days, which will identify (a) the owner of the duct/conduit or ROW, including duct/conduit or ROW within a specific multiple tenant environment, multi-dwelling unit as reflected in Qwest's records, ~~and~~ (b) whether or not Qwest has a copy of an agreement that provides Qwest access to the duct/conduit or ROW, including duct/conduit or ROW within a specific multiple tenant environment, multi-dwelling unit in its possession, ~~and~~ (c) the nature of each ROW agreement (i.e., publicly recorded or non-recorded). Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that the original property owner may not be the current owner of the property.⁵

10.8.2.27.1.1 If Qwest has a copy of such agreement (whether publicly recorded or not) and there is no specific provision affording the third party property owner confidentiality, Qwest will provide the agreement to the CLEC when it provides the MTE Matrix or ROW Matrix, as applicable, to CLEC.⁶

10.8.2.27.1.2 If Qwest has a copy of such agreement, the agreement is not publicly recorded and the agreement contains a specific provision affording the third party property owner confidentiality, then at the time Qwest provides CLEC the MTE Matrix or ROW Matrix, as applicable, 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. If CLEC has already satisfied one of the conditions set forth in Section 10.8.2.27.2, Qwest will provide CLEC with the following information from such agreement at the time Qwest provides the MTE Matrix or ROW Matrix, as applicable, and confidentiality provision: (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 and bound or other legal description of the property; (e) the term of the agreement; and (f) the parties to the agreement. If CLEC has not already satisfied one of the conditions set forth in Section 10.8.2.27.2, Qwest will provide CLEC with the foregoing information (items (a) through (f), above) from such agreement within three (3) business days after CLEC satisfies

⁵ These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

⁶ These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

one of the conditions.⁷

10.8.2.27.2 Qwest reserves any confidentiality rights it may have with regards to the content of the agreement. Qwest will provide to CLEC a copy of an agreement listed in the MTE Matrix or ROW Matrix, as applicable, MDU information matrix that has not been publicly recorded and that contains a specific provision affording the third party property owner confidentiality, upon satisfaction by CLEC of any one of the following conditions: (1) after CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by presenting to Qwest an executed version of the Consent to Disclosure form that is included in Attachment 4 to Exhibit D of this Agreement; (2) . In lieu of submission of the Consent to Disclosure form, CLEC provides must comply with the indemnification requirements in Section 10.8.4.1.3 a legally binding and satisfactory agreement to indemnify Qwest in the event of any legal action arising out of Qwest's provision of such agreement to CLEC; or (3) CLEC must agrees to be bound by the terms and conditions of and executes the Form Protective Agreement set forth in Attachment 5 to Exhibit D of this Agreement. 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.⁸

10.8.2.27.3 Without waiving any right it may have to confidentiality in an agreement that provides Qwest access to a multiple tenant environment multi-dwelling unit that Qwest provides to CLEC or that CLEC obtains from the multiple tenant environment multi-dwelling unit owner or operator, Qwest shall redact all dollar figures from copies of agreements that have not been publicly recorded that Qwest provides to CLEC and shall require that the multiple tenant environment multi-dwelling unit owner or operator make similar redaction's prior to disclosure of the agreement.⁹

10.8.2.27.4 In all instances, CLEC will use agreements only for the following purposes: (a) to determine whether Qwest has ownership or control over duct, conduits, or rights-of-way within the property described in the agreement and the scope of such ownership or control; (b) to determine the ownership of wire within the property described in the agreement; (c) to determine the Demarcation Point between Qwest facilities and the Owner's facilities in the property described in the agreement; (d) to determine the extent of the property interest of the third-party owner, including any provisions that establish the legal description of any property interest of a third-party owner, including any metes and bounds of the property; (e) to determine the term of the

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agreement; and (f) to determine the parties to the agreement. CLEC further agrees that CLEC shall not disclose the contents, terms, or conditions of any agreement provided pursuant to Section 10.8.2.27 to any CLEC agents or employees engaged in sales, or marketing, or product management efforts on behalf of CLEC. These limitations shall not apply if CLEC executes the Access Agreement set forth in Attachment 4 to Exhibit D of this Agreement.¹⁰

10.8.3 Rate Elements

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

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the MTE Matrix or ROW Matrix, as applicable, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) and the MTE/EDU Matrix or ROW Matrix, as applicable, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit building in Qwest's possession that relates to Telecommunications Services provided to or through real property owned by the third party (MTE/EDU Agreement) and, for each such MTE/EDU Agreement, the name of the third party. Separate Inquiry Fees apply for ROW, poles and duct/conduit/innerduct.¹¹

10.8.3.2 Field Verification Fee/Access Agreement Preparation Fee. In the case of poles and duct/innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for poles and manholes. In the case of ROW, the Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Access Agreement for each ROW requested by CLEC. Field Verification and Access Agreement Preparation Fees shall be billed in advance.

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

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Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one (1) foot of pole space (except for antenna attachment which requires two (2) feet). This fee shall be annual unless CLEC requests that it be semi-annual.

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

10.8.3.6 Access Agreement Consideration. A pre-paid fee which constitutes consideration for conveying access to the ROW to CLEC. This fee shall be a one-time (i.e. nonrecurring) fee.

10.8.4 Ordering

There are two (2) steps required before placing an Order for access to ROW, Duct/Innerduct and Pole Attachment: Inquiry Review and Field Verification.

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Duct/Innerduct Occupancy, Qwest will provide CLEC with Exhibit D. CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled poles, duct/innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.

10.8.4.1.1 Inquiry Review – Duct/Conduit/Innerduct. Qwest will complete the database inquiry and prepare a duct/conduit structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar Days or within the time frames of the applicable federal or state law, rule or regulation.

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar Days of the request.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MTEDU Matrix and a copy of all publicly recorded agreements listed in those matrices to CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the ~~Matrices that have not been publicly recorded if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of the Consent to Disclosure form, which is included in Exhibit D, Attachment 4 or the information set forth in Section 10.8.2.27.1.2 in accordance with the terms of Section 10.8.2.27 of this Agreement.~~ Qwest may

redact all dollar figures from copies of agreements listed in the ~~Matrices~~ that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. ~~Alternatively, in order to secure any agreement that has not been publicly recorded, a CLEC may provide a legally binding and satisfactory agreement to indemnify Qwest in the event of any legal action arising out of Qwest's provision of such agreement to CLEC or must agree to be bound by the terms and conditions of the Form Protective Agreement, set forth in Attachment 5 to Exhibit D of this Agreement. In that event, CLEC shall not be required to provide an executed Consent to Disclosure form.~~ Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.¹²

10.8.4.2 Field Verification – Poles Duct/Innerduct and Access Agreement Preparation (ROW). CLEC will review the inquiry results and determine whether to proceed with field verification for poles/ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus \$10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for duct/innerduct/conduit, ROW or poles : (a) in the case of innerduct/duct/conduit, a field survey and site investigation of the innerduct/duct/conduit, including the preparation of distances and drawings, to determine availability of existing innerduct/duct/conduit; identification of Make-Ready costs required to provide space; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey the interest identified in the Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or parties, and such disputes shall not involve Qwest; and/or (c) In the case of poles, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed not later than forty-five (45) calendar Days after CLEC's submission of the inquiry request. Make-ready time, if any, and CLEC review time, is not part of the forty-five (45) day interval. The Attachment 2 quotation shall be valid for ninety (90) calendar Days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest

¹² These changes reflect post-workshop consensus language that complies with the Utah MTE/ROW Orders.

with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available duct/innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Duct/Innerduct. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when poles/duct/innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar Days after written notification of the completion of the Make-Ready work.

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

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for poles, ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar Days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar Days following the denial.

10.8.5 Billing

CLEC agrees to pay the following fees in advance as specified in Exhibit A: Inquiry Fee, Field Verification Fee, Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Duct/Innerduct Occupancy Fee and Access Agreement Consideration. Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for poles/duct/innerduct (i.e., Pole Attachment Fee and Duct/Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage fees for poles/duct/innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for poles/duct/innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices. All fees are not refundable except as expressly provided herein.

10.8.6 Maintenance and Repair

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