

**FIRST AMENDMENT TO  
TRAFFIC EXCHANGE AGREEMENT  
BETWEEN  
CENTURYTEL OF COWICHE, INC.  
AND  
360NETWORKS (USA) INC.**

**THIS FIRST AMENDMENT** to the Traffic Exchange Agreement between 360networks (USA) inc. ("CLEC") and CenturyTel of Cowiche, Inc. ("CenturyTel") which became effective September 27, 2007 and was approved by the Washington Utilities and Transportation Commission in Docket UT-073055 on January 11, 2008 ("Agreement") is hereby made as provided in Article III, Paragraph 3 of the Agreement.

**WHEREAS**, CLEC wishes to establish directory services with CenturyTel pursuant to the terms of Directory Services Agreement, the parties agree to amend the Agreement by adding the Directory Services Agreement as Appendix D.

**CenturyTel of Cowiche, Inc.**

Name: Jeffrey A. Slavin

Title: VP-External Relations

Date: 5/13/2008

**360networks (USA) inc.**

Name: Lizbeth B. Bunchy

Title: VP, Operations

Date: 5/7/2008

**APPENDIX D**  
**DIRECTORY SERVICES AGREEMENT**

This Directory Services Agreement (the "Agreement") is made effective this **30th day of April, 2008** (the "Effective Date") by and between **360networks (USA) inc** ("CLEC"), a Nevada corporation with its principle place of business at 867 Coal Creek Circle, Suite 160, Louisville, CO 80027 and **CenturyTel of Cowiche, Inc.** ("CenturyTel"), a Washington corporation its principle place of business at **100 CenturyTel Drive, Monroe, LA 71203**, each sometimes referred to herein individually as a "Party" or collectively as the "Parties".

WHEREAS, CenturyTel, either directly or through a third party, publishes and distributes alphabetical (white pages) and/or classified (yellow pages) telephone directories (hereinafter the "Directory" or "Directories" as the case may be) in certain CenturyTel local exchange service areas (the "CenturyTel Local Areas"); and

WHEREAS, CLEC is a properly certificated telecommunications carrier and is licensed to provide local exchange telephone service ("Local Service") directly to the public in CenturyTel Local Areas pursuant to the provisions of CLEC's Interconnection and/or Resale Agreements (the "Telco Agreements") with CenturyTel and filed with the appropriate State Commission; and

WHEREAS, CLEC desires and CenturyTel is willing to provide, subject to the terms and conditions set forth herein, certain services associated with such Directories as more particularly described herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. SCOPE**

This Agreement sets forth the terms pursuant to which CenturyTel agrees to provide to CLEC basic services associated with the Directories such as publication of listings and distribution (the "Services") as more particularly described in Section 4 of this Agreement. CenturyTel and CLEC may, from time to time, agree on the provision of additional services ("Additional Services"), which shall be furnished pursuant to addendums to this Agreement and governed by the terms and conditions set forth in this Agreement. No addendum for Additional Services shall be binding unless signed by the Parties to this Agreement.

**2. TERM**

This Agreement shall remain effective only for the period of time set forth in the Telco Agreement, and shall terminate upon the expiration or termination thereof, or in accordance with the express provisions of this Agreement (the "Term"). The terms and conditions of this Agreement shall be applicable to all Directories published during the Term.

### 3. CLEC OBLIGATIONS AND RESPONSIBILITIES

During the Term of this Agreement, the following obligations shall be the responsibility of CLEC, which obligations, unless otherwise expressly set forth herein, shall be performed within the time frames and in accordance with the policies and procedures set forth on *Exhibit A* attached hereto:

- a. CLEC shall transmit to CenturyTel, or such third party publisher as CenturyTel may designate from time to time ("Publisher"), all Listing Information (as hereinafter defined) relating to its subscribers ("Subscribers") who desire published listings within a CenturyTel Directory. For purposes of this Agreement, "Listing Information" shall consist of the Subscriber's name, address, telephone number, desired yellow pages classified heading (if any), and all other information reasonably requested by CenturyTel. Under no circumstances shall CLEC provide Subscriber data as a part of Listing Information for those Subscribers who do not desire published listings. Listing Information shall be supplied without charge by CLEC, and shall be transmitted in a format and within the time frames as reasonably directed by CenturyTel and in accordance with CenturyTel's established standards and guidelines as may be communicated to CLEC from time to time, and may be used by CenturyTel in providing Directories in any format and for related purposes.
- b. CLEC shall separately provide CenturyTel or Publisher with Directory delivery address data for Subscribers, if different from the Listing Information, and for those Subscribers who do not desire published listings if Subscriber has authorized CLEC or its Customer to provide CenturyTel said information..
- c. CLEC shall promptly, but in any event within ten days, notify CenturyTel or Publisher of any Directory related inquiries, requests, or complaints that CLEC receives from Subscribers, and shall reasonably cooperate with CenturyTel and/or Publisher to resolve such matters in a timely and expeditious manner.
- d. CLEC shall process all Listing Information change requests received from CenturyTel or Publisher within the time frames established by CenturyTel in its sole discretion.
- e. CLEC shall transmit to CenturyTel or Publisher all information arising from Subscriber transactions that should result in an addition to, a change in or a deletion of any Listing Information previously transmitted by CLEC to CenturyTel and held in CenturyTel's database.
- f. CLEC will pay all costs as set forth in the attached *Exhibit B, Directory Services Schedule*, for Services, including but not limited to CenturyTel's reasonable expenses associated with its performance of the obligations set forth in this

Agreement. Such costs shall include, but are not limited to, expenses associated with work performed by the Publisher.

- g. CLEC shall respond within five (5) business days to any request by CenturyTel to review and correct any Galley Proofs (as hereinafter defined). CLEC expressly acknowledges that time is of the essence with respect to the publishing cycle of any Directory. In the event CLEC fails to provide CenturyTel with written notice of any necessary corrections within the time frame set forth in this provision, such Galley Proofs shall be deemed to be correct and CLEC shall indemnify CenturyTel for any claims by Subscribers related to errors in the Directory as published in reliance on such Galley Proofs.
- h. Upon request, CLEC shall furnish to CenturyTel documentation evidencing compliance with the requirements of this Agreement.

#### **4. CENTURYTEL OBLIGATIONS AND RESPONSIBILITIES**

During the Term of this Agreement, the responsibilities of CenturyTel and/or Publisher shall be the following:

- a. CenturyTel shall include one standard listing ("CLEC Listing") for each Subscriber for whom CenturyTel receives Listing Information in CenturyTel's Directories for the CenturyTel Local Area. Standard CLEC Listings shall be interfiled with listings of other local exchange telephone company subscribers and treated in the same manner as other listings, according to CenturyTel's regular procedures. CenturyTel shall establish a process that affords CLEC an opportunity to review and correct Subscriber's alphabetical listings in advance of publication (generally referred to as a "Galley Proof"). Said review process shall be subject to the availability of CLEC Listings in advance of publication and the time/deadline constraints imposed by CenturyTel and/or its Publisher, and as set forth in Section 3.g. above. CLEC shall be responsible for any costs associated with the review process charged by CenturyTel and/or its Publisher.
- b. CenturyTel shall make available, at no charge to CLEC or its Subscribers, one listing for each CLEC business customer under the appropriate heading in CenturyTel's applicable classified Directories, such headings and Directories to be determined at CenturyTel's discretion.
- c. CenturyTel shall include, at no additional charge, CLEC critical contact information alphabetically (by local exchange carrier) in the information pages of its alphabetical Directories (but only where such information pages are otherwise included in a given Directory) for communities where CLEC offers Local Service, in accordance with CenturyTel's standards for inclusion in a given Directory. For this purpose, CLEC must: (1) be state certificated, (2) provide local dial tone service within the Directory distribution coverage area, (3) have executed an Interconnection Agreement with CenturyTel or a CenturyTel affiliate that has

been approved by the State Public Service or Utility Commission, (4) supply in a timely manner critical contact information needed by CenturyTel to produce information pages, and (5) ensure that critical contact information telephone numbers are working numbers. Critical contact information includes CLEC's name and logo, telephone numbers for telephone services, billing, and repair services.

- d. CenturyTel shall not be restricted in supplying to third parties any information obtained from CLEC regarding its Subscribers as may be required to fulfill regulatory requirements or as may otherwise be required by law.
- e. CenturyTel shall distribute alphabetical and classified Directories to local Subscribers at the time the Directory is published, at no charge to CLEC or Subscribers, in accordance with CenturyTel's procedures, provided that physical Directory delivery information has been provided by CLEC. Thereafter, and for the life of the Directory, CenturyTel shall undertake distribution to all new CLEC Subscribers and those existing Subscribers that need replacement or additional copies ("Secondary Distribution") upon CenturyTel's receipt of necessary Subscriber information via CenturyTel's standard directory service request process ("DSR Process"), such Secondary Distribution to be in accordance with CenturyTel's standard procedures. CenturyTel shall make available to CLEC's Subscribers an 800 number to use for any Secondary Distribution requirements.

## **5. DIRECTORY ADVERTISING**

CLEC acknowledges and agrees that this Agreement does not cover the provision of Directory advertising, and CLEC expressly acknowledges that any purchase of Directory advertising shall be handled in accordance with the terms and conditions of CenturyTel's standard Contract for Directory Advertising Services, and at the prices which CenturyTel may have in effect from time to time.

## **6. COOPERATION**

The Parties acknowledge and agree that cooperation between them will be required to serve the needs of each Party's subscribers most effectively, and agree to exercise commercially reasonable efforts to achieve the highest quality of service for such subscribers.

## **7. SALES AND PUBLISHING PROCEDURES**

CenturyTel shall maintain full authority over its Directory publishing schedules, procedures, standards, and practices, and over the scope and schedules of its Directories. All CLEC listings shall be subject to such publishing schedules, procedures, standards, and practices, and scope and schedules of CenturyTel's Directories. CenturyTel shall periodically supply CLEC with updates concerning publishing schedules and related matters. Nothing in this Agreement shall be construed as limiting CenturyTel from entering into an agreement with a third party, in its sole discretion, to act as Publisher.

## **8. LIMITATION OF LIABILITY; INDEMNITY**

- a. CenturyTel's liability to CLEC or any CLEC Subscriber for any errors or omissions in Directories published by CenturyTel and/or Publisher (including, but not limited to, any error in any Subscriber or CLEC listing), or for any default or breach of this Agreement, or for any other claim otherwise arising hereunder, shall be limited to amounts paid by CLEC to CenturyTel under this Agreement. CenturyTel shall have no liability to CLEC or its Subscribers for any errors or omissions in any Subscriber or CLEC listing published by CenturyTel, or for the publication of any Subscriber data where such Subscriber does not desire a published listing. CLEC shall fully indemnify CenturyTel in accordance with the provisions of Section 8.b. of this Agreement as to any errors or omissions in a CLEC Subscriber listing. CLEC expressly represents that it is authorized to enter into this provision on behalf of itself and its Subscribers.
- b. CLEC agrees to indemnify, defend, and hold harmless CenturyTel, its directors, officers, employees, agents and their affiliates (collectively, the "Indemnified Parties") from all losses, claims, damages, expenses, suits, or other actions, or any liability whatsoever including, but not limited to, damages, liabilities, costs and attorneys' fees, made or asserted by any third party (including, but not limited to Subscribers) against the Indemnified Parties and arising out of CenturyTel's performance under the terms of this Agreement, from CLEC's or any third party's use of the information provided under this Agreement, or from CLEC's performance under this Agreement.
- c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR ANY OTHER PECUNIARY LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT WHERE SUCH DAMAGES OCCUR AS THE RESULT OF A BREACH OF CONFIDENTIALITY, OR RELATE TO A CENTURYTEL INDEMNITY CLAIM.

## **10. ASSIGNMENT**

Any assignment by either Party of any right or duty under this Agreement without the written consent of the other Party shall be void, except that either Party may assign all of its rights and duties under this Agreement to any entity that is a subsidiary or affiliate of that Party, or to a successor by way of merger or purchase of all or substantially all of the assigning Party's stock or assets, as of the date of assignment without consent, but with written notification and except that CenturyTel may subcontract the services to be provided hereunder. Any assignment of any right or duty under this Agreement, including but not limited to assignment to a subsidiary or affiliate, shall not relieve or excuse the assigning Party's responsibility for any performance pursuant to this Agreement.

## **11. RELATIONSHIP OF THE PARTIES, THIRD PARTY BENEFICIARIES**

This Agreement does not create any joint venture, partnership, or employment relationship between the Parties or their employees, and the relationship between the Parties shall be that of independent contractors. There are no intended third party beneficiaries to this Agreement.

## **12. CONFIDENTIAL INFORMATION**

- a. The Parties recognize and agree that each Party owns, or otherwise has a proprietary interest in, certain information which is of a special, unique, or non-public nature, including, but not limited to: trade secrets; information relating to its business plans, schedules, operations and affiliations; marketing information; computer software; and other information relating to such Party, or its suppliers, customers, and affiliates (hereinafter collectively referred to as "Confidential Information"). During the Term of this Agreement, the Parties have disclosed, or may hereafter disclose, to each other some or all of such Confidential Information incident to performance of the Parties' obligations under this Agreement. The receiving party shall preserve in confidence all Confidential Information of the disclosing party, and shall not reveal or in any way disclose the content or existence of Confidential Information to persons not authorized in writing by the disclosing party to receive same, and the Parties shall take all reasonable steps necessary to prevent unauthorized parties, including local telecom service sales during the listing order process, from obtaining Confidential Information in the receiving party's knowledge or possession. The terms and conditions of this Agreement, and any agreements entered into in accordance with this Agreement, shall be considered Confidential Information, except to the extent reasonably necessary to enforce them.
- b. The receiving party shall not have an obligation to protect Confidential Information of the disclosing party which: (i) becomes publicly available other than through the action of the receiving party, (ii) is rightfully furnished to the receiving party by a third party without restriction on disclosure, (iii) is furnished by the disclosing party to a third party without restriction on disclosure, (iv) is previously known by the receiving party at the time of receiving such information, or (v) is required to be disclosed by valid order of a court or other governmental body or otherwise required by law.
- c. Each Party will make copies of the Confidential Information only as necessary for its use under the terms hereof, and each such copy will be marked with the same proprietary notices as appear on the originals. Each Party agrees to use the Confidential Information solely in support of the Agreement and for no other purposes. Confidential Information shall be labeled as such to the extent possible.

## **13. FORCE MAJEURE**

In the event performance of this Agreement is either directly or indirectly prevented or restricted by reason of fire, flood, earthquake, acts of God, war, revolution, terrorism, embargo, acts of government in its sovereign capacity, labor difficulties, unavailability of equipment from a vendor, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the affected Party, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention or restriction, and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis, until the delay or restriction has ceased; *provided, however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance, and both parties shall proceed at the time such causes are removed.

#### **14. PUBLICITY**

Neither CenturyTel nor CLEC shall disclose the terms of this Agreement except to the extent reasonably necessary to enforce them, or use the trade names or trademarks of the other, without the prior written consent of the other. The Parties shall consult with each other (and allow the other Party notice, and a reasonable time to comment) in preparing any announcement, press release, public statement, news media response or other form of release of information concerning this Agreement or the transactions contemplated hereby. Neither Party shall issue or cause the publication of any press release, public announcement or media response without the prior written consent of the other Party.

#### **15. SEVERABILITY**

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the remainder of the Agreement shall continue in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change occurs as a result of action by a court or regulatory agency, CenturyTel and CLEC shall negotiate in good faith, replacement language for such unenforceable provision. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate the Agreement without penalty or liability upon written notice to the other Party.

#### **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral. No representations, understandings, agreements, or warranties, express or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

#### **17. GOVERNING LAW**

This Agreement shall be executed and delivered in Monroe, Louisiana, and will be governed by and construed in accordance with the laws of the State of Louisiana without respect to Louisiana's rules governing conflicts of laws.



## 18. NOTICES

Any notice to either Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, or on the date five (5) days after posting if delivered by certified mail, or by telecopier with written confirmation or courier service that obtains written receipt. Notice may also be provided by facsimile transmission which shall be effective on the next Business Day following date of transmission, where "Business Day" shall mean Monday through Friday, except for holidays on which United States mail is not delivered. Any notice shall be directed to the applicable address indicated below, or such address as the Party to be notified has designated by giving written notice to the other Party.

If to CenturyTel:      CenturyTel  
Jennifer Garsee  
100 CenturyTel Drive,  
Monroe, LA 71203  
318-330-6382  
FAX 318-340-5117  
Jennifer.garsee@centurytel.com

---

With a copy to:      CenturyTel  
Director, Carrier Relations  
805 Broadway  
Vancouver, WA 98660  
Telephone: 360-905-6985  
FAX: 360-905-6811  
jackie.phillips@CenturyTel.com

If to CLEC:      Michel Singer Nelson  
Associate General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027  
mnelson@360.net

## 19. TAXES

Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. Each Party shall provide the other Party sufficient notice to protest any taxing jurisdiction's audit claims, and cooperate fully if an appeal is deemed necessary.

## 20. WAIVER

The failure of either Party to require performance of any provision of this Agreement, or to exercise any right or privilege granted under this Agreement, shall not be construed as a waiver

of such provision or any other provision of this Agreement, and the same shall continue in full force and effect.

## **21. INTELLECTUAL PROPERTY**

Neither CenturyTel, Publisher nor a third party performing CenturyTel obligations hereunder shall have any obligation to defend, indemnify, or hold harmless, or to acquire any license or right for the benefit of, or owe any other obligation, or have any liability to CLEC based on, or arising from, any claim, demand, or proceeding by any third party asserting direct or contributory infringement, misuse, or misappropriation of any patent, copyright, trademark, trade secret, or other intellectual property right of any third party.

## **22. EXPENSES**

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses resulting from activities related to the subject of this Agreement.

## **23. COMPLIANCE WITH LAWS AND REGULATIONS**

Each of CenturyTel and CLEC shall comply with all federal, state, and local statutes, regulations, and administrative rulings applicable to its performance under this Agreement.

## **24. CHANGE OF LAW**

CenturyTel and CLEC further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement was produced. Any modifications to those requirements will be deemed to automatically supersede any terms and conditions of this Agreement, and the Parties agree to expeditiously make such changes to the terms of this Agreement.

## **25. RULE OF CONSTRUCTION**

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

## **26. HEADINGS**

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

## **27. PARTIAL TERMINATION**

Notwithstanding anything to the contrary contained herein, CenturyTel may terminate this Agreement as to a specific exchange or exchanges in the event that CenturyTel discontinues publishing a Directory that covers such exchange or exchanges. CenturyTel shall provide CLEC with at least ninety (90) days' prior written notice of such termination, which shall be effective

on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific exchange or exchanges, this Agreement shall remain in full force and effect for the remaining exchanges.

**28. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

**29. ATTORNEY'S FEES**

In the event of any suit or action to enforce or interpret this Agreement or any provision hereof, the prevailing party in such suit or action shall be entitled to recover its costs, expenses and reasonable attorney's fees, both at trial and on appeal, in addition to all other sums allowed by law and this Agreement.

IN WITNESS WHEREOF, the authorized representatives of each Party have executed this Agreement as of the Effective Date hereof.

CenturyTel of Cowiche, Inc.

By:

*Jeffrey S. Glou*  
(signature)

Name:

*Jeffrey S. Glou*

Title:

*5/13/2008*

360networks (USA) inc.

By:

*Liza L. Donnelly*  
(signature)

Name:

*Liza L. Donnelly*

Title:

*VP, Operations*

**Listings Provision Authorization for CLEC**

CenturyTel is hereby authorized to provide CLEC Listing Database Extract Information and CLEC Listing Update Information to third party Directory publishers upon such publisher's request.

**360networks (USA) inc.**

By: Liza L. Deenchy  
(signature)

Name: Liza L. Deenchy

Title: VP Operations

Date: 5/7/2008

**EXHIBIT A  
Policies and Procedures; Required Time Frames**

- CLEC to submit directory listing requests for all additions, changes, deletions on a daily basis via the DSR Process per OBF standard to CenturyTel or its Publisher as directed by CenturyTel
- CLEC to respond to all listing queries and requests for directory listing changes within two business days
- CLEC to assign classified heading for each business customer at the time of submission of the DSR Process
- CLEC to provide delivery address information for each CLEC subscriber either via the DSR Process or as otherwise directed by CenturyTel

**EXHIBIT B**  
**Directory Services Schedule**

**Description of Services:**

**Preliminary Pages**

- Critical customer contact numbers for billing, service, repair
- Listing of CLEC name and address in alpha order on page(s) titled "Other Telephone Service Providers"

**Directory Listings**

- A white pages listing for each published CLEC subscriber
- A standard regular listing in classified section of directory for each business
  - A complete list of classified headings and a directory production schedule, with service order close and galley due dates, will be provided
- Fulfillment of orders for directory listings to 3<sup>rd</sup> party directory publishers on behalf of CLEC

**White Pages Galleys**

- One white pages galley for each directory to proof prior to publication at no charge
- Additional galleys available upon request

**Copies of Directories**

- One copy of telephone directory to CLEC at time of publication
- Delivery of directories to CLEC subscribers, (quantity of 1 per residence and 2 per business unless otherwise specified) during initial and secondary distribution

**Directory Service Request**

- Service order processing to update, establish or change a directory listing

**Fee Schedule:**

<b>Item</b>	<b>Description</b>	<b>Fee</b>
Preliminary Pages	Listing of CLEC and contact numbers	No Charge
Directory Listings	Subscriber Listings	No Charge
	Tariff Items (e.g. additional listings)	Tariff Rate
	Order Fulfillment	No Charge
White Pages Galleys	First galley	No Charge
	Ad Hoc (Each Additional) Galley	\$150.00 ea.
	Listing changes on final galley	\$1.50 each
Copies of Directories	Copies for Subscribers	No Charge
Directory Service Request (stand alone)	Request to update or establish a directory listing	\$7.50 per DSR