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March 28, 2005

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Pam Bonrud  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

RECEIVED

MAR 28 2005

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: In The Matter of the Petition of DIECA Communications, Inc., d/b/a Covad  
Communications Company for Arbitration of an Interconnection Agreement with Qwest  
Corporation  
Our file: 4807

Dear Pam:

Enclosed please find an original and 10 copies of Covad Communications Company's Petition for Arbitration Pursuant to Section 252(B) of the Communications Action of 1934, As Amended. By copy of this letter service is made on Linda Miles, of Qwest Corporation, 1600 7th Avenue, Room 1809, Seattle, WA 98191; and John Devaney and Mary Rose Hughes; of Perkins Coie, LLP, 607 Fourteenth Street, N.W., Suite 800, Washington, DC 20005-2011.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Linda Miles  
John Devaney  
Gregory Diamond

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MAR 28 2005

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Attorneys for DIECA Communications, Inc.  
 d/b/a Covad Communications Company

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**BEFORE THE SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

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IN THE MATTER OF THE PETITION OF ) DIECA COMMUNICATIONS, INC. D/B/A ) COVAD COMMUNICATIONS COMPANY FOR ) ARBITRATION OF AN INTERCONNECTION ) AGREEMENT WITH QWEST CORPORATION )	) ) ) ) )	Case No. _____  <b>PETITION FOR ARBITRATION          PURSUANT TO SECTION 252(B)          OF THE COMMUNICATIONS          ACTION OF 1934, AS AMENDED</b>
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DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad") through its undersigned counsel, hereby petitions the South Dakota Public Utilities Commission ("Commission") to arbitrate, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "Act"), certain terms and conditions of a proposed Interconnection Agreement between Covad

and Qwest Corporation ("Qwest") (hereafter, Covad and Qwest are collectively referred to as the "Parties") for the State of South Dakota.

**A. Name, Address, and Telephone Number of the Petitioner and its Counsel**

1. Petitioner's full name and its official business address are as follows:

DIECA Communications, Inc.  
d/b/a Covad Communications Company  
110 Rio Robles  
San Jose, California 95134-1813

DIECA Communications, Inc. is a Virginia corporation. Covad is, and at all relevant times has been, a "competitive local exchange carrier" ("CLEC") under the Act.

2. The names, addresses, and contact numbers of Covad's representatives in this proceeding are as follows:

Brett Koenecke  
May, Adam, Gerdes & Thompson LLP  
503 South Pierre Street  
P.O. Box 160  
Pierre, SD 57501-0160  
(605) 224-8803  
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Senior Counsel  
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(720) 670-3350 Fax  
[gdiamond@covad.com](mailto:gdiamond@covad.com)

**B. Name, Address, and Telephone Number of the Other Party to the Negotiation and its Counsel**

3. Qwest is a corporation organized and formed under the laws of the State of Colorado, having an office at 1801 California Street, Denver, Colorado 80202. Qwest provides local exchange and other services within its service territory in South Dakota. Qwest (in current name or as U S WEST Communications, Inc.) is, and at all relevant times has been, a "Regional Bell Operating Company" ("RBOC") and an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

4. The names, addresses, and contact numbers of Covad's representatives in this proceeding are as follows:

Linda Miles  
Qwest Corporation  
1600 7<sup>th</sup> Ave  
Room 3007  
Seattle, Washington 98191  
(206) 447-3890 (Tel)  
(206) 345-0225 (Fax)

John Devaney  
Mary Rose Hughes  
Perkins Coie, LLP  
607 Fourteenth Street, N.W., Suite 800  
Washington, DC 20005-2011  
(202) 628-6600 (Tel)  
(202) 434-1690 (Fax)



**C. Brief Summary of Negotiation History**

5. The Parties have worked in good faith from language supplied by both Covad and Qwest to resolve the vast majority of issues raised during the negotiations. Notwithstanding these negotiations, Covad and Qwest have been unable to come to agreement on all terms, particularly certain terms relating to Qwest's continuing obligations to provide unbundled access to certain elements pursuant to section 271 of the Act and South Dakota law. The remaining issues that Covad understands to be unresolved between the Parties are addressed below in Section G – Unresolved Issues Submitted for Arbitration and Positions of the Parties.

6. A draft of the Interconnection Agreement ("Agreement") reflecting the Parties' negotiations to date is attached hereto as Exhibit A. Unless otherwise expressly marked in the Agreement as the proposal of one Party or another, agreed upon language is shown in normal type. Covad will continue to negotiate in good faith with Qwest to resolve disputed issues and will advise the Commission in the event arbitration, or arbitration on particular issues, is no longer necessary.

7. Covad requests that the Commission approve the Agreement between Covad and Qwest reflecting: (i) the language agreed to in Exhibit A, and (ii) the resolution in this arbitration proceeding of unresolved issues in accordance with the recommendations made by Covad below and in Exhibit A.

**D. Date of Initial Request for Negotiation and Dates 135 days, 160 days, and Nine Months After that Date**

8. Covad initiated negotiations by a letter dated January 31, 2003. The Parties have agreed to numerous extensions, agreeing that the final day for either party to seek arbitration before the South Dakota Public Utilities Commission would be March 28, 2005. Pursuant to Section 252(b)(1), arbitration must be requested between the 135<sup>th</sup> day (March 3, 2005) and the

160<sup>th</sup> day (March 28, 2005) following the date negotiations were requested. The Parties agree this Petition is timely filed.

**E. Issues Resolved by the Parties**

9. The Parties have resolved the issues and negotiated contract language to govern the Parties' relationship with respect to most of the provisions set forth in Exhibit A. These negotiated portions of the Agreement are shown in normal type. To the extent Qwest asserts that any provisions remain in dispute, Covad reserves the right to present evidence and argument as to why those provisions were considered closed and why they should be resolved in the manner shown in Exhibit A.

**F. Unresolved Issues Not Submitted for Arbitration**

10. There are no unresolved issues that are not being submitted for arbitration. While other issues remain disputed by the Parties in other states, Covad has chosen not to raise those issues in South Dakota for business reasons.

**G. Unresolved Issues Submitted for Arbitration and Positions of the Parties**

**ISSUE 1** (Section 4 Definition of "Unbundled Network Element," Sections 9.1.1, 9.1.1.6, 9.1.1.7, 9.1.1.8, 9.1.5, 9.2.1.3, 9.2.1.4, 9.3.1.1, 9.3.1.2, 9.3.2.2, 9.3.2.2.1, 9.6, 9.6.1.5.1 [and related 9.6.1.5], 9.6.1.6.1 [and related Section 9.6.1.6], and 9.21.2)

**Issue:** *Should the Parties' Agreement provide for access to network elements pursuant to Section 271 of the Telecommunications Act of 1996 and South Dakota law, as well as Section 251 of the Telecommunications Act of 1996?*

The Parties disagree with respect to Qwest's continuing obligations to provide certain network elements, including certain unbundled loops (including high capacity loops, line splitting arrangements, and subloop elements) and dedicated transport, after the FCC's recent

analysis in the *Triennial Review Order*.<sup>1</sup> Covad maintains that the Federal Communication Commission's ("FCC") explicit direction was to continue the obligations of RBOCs to provide all network elements listed in the provisions of Section 271 of the Act outlining specific RBOC obligations to maintain authority to provide in-region interLATA service (the "271 Checklist" or "Checklist"). Qwest believes its obligations under Section 271, if any, are outside the Commission's jurisdiction.

Furthermore, Covad believes that Qwest continues to be obligated under South Dakota law to provide unbundled access to network elements pursuant to South Dakota Codified Laws §49-3-15. Qwest argues this Commission's authority to regulate access to these facilities has been preempted by congressional and FCC action.

#### **A. Section 271**

This Commission can, and should, use its authority to enforce the unbundling requirements of Section 271 of the Act. The FCC made clear in the *Triennial Review Order* that Section 271 creates independent access obligations for the RBOCs:

[W]e continue to believe that the requirements of Section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251.

*Triennial Review Order*, ¶ 653.

Section 271 was written for the very purpose of establishing specific conditions of entry into the long distance that are unique to the BOCs. As such, BOC obligations under Section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis.

*Triennial Review Order*, ¶ 655.

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<sup>1</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC dockets Nos. 01-338, 96-98-98-147, FCC 03-36 ("Triennial Review Order")

Thus, there is no question that, regardless of the FCC's analysis of competitor impairment and corresponding unbundling obligations under Section 251 for *ILECs*, as a RBOC, Qwest retains an independent statutory obligation under Section 271 of the Act to provide competitors with unbundled access to the network elements listed in the Section 271 checklist.<sup>2</sup> Other states have begun enforcing section 271 unbundling obligations, and have denied RBOCs' attempts to discontinue unbundled offerings as a result of the *Triennial Review Order*. See *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local Circuit Switching for the Enterprise Market*, Pennsylvania Public Utility Commission Docket No. I-00030100, Reconsideration Order (May 27, 2004) at 4 (upholding a prior order determining that the *Triennial Review Order* relieved Verizon of its section 251 obligation to provide certain elements, but upholding its determination that access to those elements remained as a result of Verizon's section 271 long distance entry and state law). A copy of this state commission decision is attached hereto as Exhibit B.

Moreover, there is no question that these obligations include the provision of unbundled access to loops and dedicated transport under checklist item #4:

Checklist items 4, 5, 6, and 10 separately impose access requirements regarding **loop, transport, switching**, and signaling, without mentioning section 251.

*Triennial Review Order*, ¶ 654 (emphasis added).

In addition, the Commission has independent authority to enforce these Section 271 RBOC obligations. This enforcement authority encompasses the authority to ensure that Qwest fulfills its statutory duties under Section 271, including its ongoing unbundling obligations. Furthermore, there can be no argument that the Commission's enforcement of Qwest's Section 271 checklist obligations would substantially prevent the implementation of any provision of the

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<sup>2</sup> See 47 U.S.C. § 271(c)(2)(B).

Act. Indeed, where state enforcement activities do not impair federal regulatory interests, concurrent state enforcement activity is clearly authorized. *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963). Courts have long held that federal regulation of a particular field is not presumed to preempt state enforcement activity “in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.” *De Canas v. Bica*, 424 U.S. 351, 356, 96 S.Ct. 933, 936, 47 L.Ed.2d 43 (1976) (quoting *Florida Avocado Growers*, 373 U.S. at 142, 83 S.Ct. at 1217). The Act, however, hardly evinces an unmistakable indication of Congressional intent to preclude state enforcement of federal 271 obligations. Far from doing so, the Act expressly preserves a state role in the review of a RBOC’s compliance with its Section 271 checklist obligations, and requires the FCC to consult with state commissions in reviewing a RBOC’s Section 271 compliance.<sup>3</sup> Thus, the Commission clearly has the authority to enforce Qwest’s obligations to provide unbundled access to loops (including high capacity loops, line splitting arrangements and subloop elements) and dedicated transport under Section 271 checklist item #4.

The FCC did make clear in the *Triennial Review Order* that a different pricing standard applied to network elements required to be unbundled under Section 271 as opposed to network elements unbundled under Section 251 of the Act. Specifically, the FCC stated that “the appropriate inquiry for network elements required only under Section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in sections 201 and 202.” *Triennial Review Order*, ¶ 656. In other words, according to the FCC, the *legal standard* under which pricing for Section 271 checklist items should be determined is a different *legal standard* than that applied to price Section 251 UNEs. Thus,

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<sup>3</sup> See 47 U.S.C. § 271(d)(2)(B) (requiring the FCC to consult with state commissions in reviewing RBOC compliance with the 271 checklist).

“Section 271 requires RBOCs to provide unbundled access to elements not required to be unbundled under Section 251, but does not *require* TELRIC pricing.” *Triennial Review Order*, ¶ 659 (emphasis added).

Notably, in the *Triennial Review*, the FCC nowhere forbids the application of state commission pricing of network elements required to be unbundled under Section 271. Rather, the FCC merely states that unbundled access to Section 271 checklist items is not *required* to be priced pursuant to the particular forward-looking cost methodology specified in the FCC’s rules implementing Section 252(d)(1) of the Act – namely, TELRIC, i.e., total element long run incremental cost.<sup>4</sup> The FCC states that the appropriate legal standard to determine the correct price of Section 271 checklist items is found in Sections 201 and 202. However, nowhere does the FCC state these two different legal standards may not result in the same, or similar, rate-setting methodology.

Furthermore, the FCC does not preclude the use of forward-looking, long-run incremental cost methodologies *other than TELRIC*, such as TSLRIC (total service long run incremental cost), to establish the prices for access to Section 271 checklist items. As the FCC made clear when it adopted the TELRIC pricing methodology in its *Local Competition Order*, there are various methodologies for the determination of forward-looking, long-run incremental cost. *Local Competition Order*, FCC 96-325, ¶ 631. TELRIC describes only one variant, established by the FCC for setting UNE prices under Section 252(d)(1), derived from a family of cost methodologies consistent with forward-looking, long-run incremental cost principles. *See Local Competition Order*, FCC 96-325, at ¶¶ 683-685 (defining “three general approaches” to setting forward-looking costs). Thus, the FCC’s *Triennial Review Order* does not preclude the

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<sup>4</sup> *In the Matter of the Implementation of the Local Competition Provision of the Telecommunications Act of 1996*, CC Docket No. 96-96, FCC 96-325, First Report and Order, ¶¶672-703 (rel. August 8, 1996). (“*Local Competition Order*”). These sections of the *Local Competition Order* provide a detailed description of cost methodologies and TELRIC.

use of a forward-looking, long-run incremental cost standard *other than TELRIC* in establishing prices consistent with Sections 201 and 202 of the Act.<sup>5</sup>

## **B. State Law Unbundling Authority**

The South Dakota Legislature has codified and vested in the Commission the authority to compel telecommunications companies to provide for the joint use of their plant and equipment, and allow physical connections with other telephone companies. *See* South Dakota Codified Laws §49-31-15, which provides very broadly as follows:

The commission may compel access to any telecommunications facilities in this state. Any telecommunications company desiring access to any other company's facilities shall, if access is refused, make an application to the commission. Upon receipt of the application, the commission shall ascertain the facts in the case. If in its judgment the public service demands the access and the facilities of the applicant are in proper condition, the commission may order the access upon such terms and conditions that are found to be in the public interest and apportion the expense of the access. (emphasis added).

This Commission therefore has the requisite authority to require access to loops, including high capacity loops, line splitting arrangements and subloop arrangements, as well as dedicated transport, under its independent, state law authority.

This independent state law authority is not preempted by the FCC's recent *Triennial Review Order* or any other law or regulation. Nowhere does Section 251 of the Act evince any general Congressional intent to preempt state laws or regulations providing for competitor access to unbundled network elements or interconnection with the ILEC. In fact, as recognized by the FCC in its *Triennial Review Order*, several provisions of the Act expressly indicate Congress' intent not to preempt such state regulation, and forbid the FCC from engaging in such preemption:

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<sup>5</sup> For example, where the 271 checklist item for which rates are being established is not legacy loop plant but next-generation loop plant, incumbents might argue for the use of a forward-looking, long-run incremental cost methodology based on their *current network technologies* – in other words, a non-TELRIC but nonetheless forward-looking, long-run incremental cost methodology. *See, e.g., Local Competition Order*, FCC 96-325, ¶ 684.

Section 252(e)(3) preserves the states' authority to establish or enforce requirements of state law in their review of interconnection agreements. Section 251(d)(3) of the 1996 Act preserves the states' authority to establish unbundling requirements pursuant to state law to the extent that the exercise of state authority does not conflict with the Act and its purposes or our implementing regulations. Many states have exercised their authority under state law to add network elements to the national list.

*Triennial Review Order*, ¶ 191 (emphasis added).

As the FCC further acknowledges in the *Triennial Review Order*, Congress expressly declined to preempt states in the field of telecommunications regulation:

We do not agree with incumbent LECs that argue that the states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act.

*Triennial Review Order*, ¶ 192.

In fact, the FCC only identified a narrow set of circumstances under which federal law would act to preempt state laws and rules providing for competitor access to ILEC facilities:

Based on the plain language of the statute, we conclude that the state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of section 251 *and* do not “substantially prevent” the implementation of the federal regulatory regime....

[W]e find that the most reasonable interpretation of Congress' intent in enacting sections 251 and 252 to be that state action, whether taken in the course of a rulemaking or during the review of an interconnection agreement, must be consistent with section 251 and must not “substantially prevent” its implementation.

*Triennial Review Order*, ¶¶ 192, 194.

Notably, in reaching these conclusions, the FCC was simply restating existing, well-known precedents governing the law of preemption. Specifically, the long-standing doctrine of federal conflict preemption provides for exactly the limited sort of federal preemption acknowledged by the FCC's *Triennial Review Order*. Courts have long held that state laws are



preempted only to the extent that they actually conflict with federal law. As noted by the FCC's *Triennial Review Order*, such conflict exists where compliance with state law "stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress." *Triennial Review Order*, ¶ 192 n. 613 (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). Even more notably, in its *Triennial Review Order*, the FCC did not act to preempt any existing state law or regulation inconsistent with the FCC's rules, nor did it act to preclude the adoption of future state laws or regulations governing the access of competitors to ILEC facilities which are inconsistent with the FCC's rules. In fact, following the governing law set out in the Eighth Circuit's *Iowa Utilities Board I* decision, the FCC specifically recognized that state laws or regulations which are inconsistent with the FCC's unbundling rules are not ipso facto preempted:

That portion of the Eighth Circuit's opinion reinforces the language of [Section 251(d)(3)], *i.e.*, that state interconnection and access regulations must "substantially prevent" the implementation of the federal regime to be precluded and that "merely an inconsistency" between a state regulation and a Commission regulation was not sufficient for Commission preemption under section 251(d)(3) (emphasis added).

*Triennial Review Order*, ¶ 192 n. 611 (citing *Iowa Utils. Bd. v. FCC*, 120 F.3d at 806).

In so doing, the FCC made clear that it was acting in conformance with the governing law set out in the *Iowa Utilities Board I* decision:

We believe our decision properly balances the broad authority granted to the Commission by the 1996 Act with the role preserved for the states in section 251(d)(3) and is fully consistent with the Eighth Circuit's interpretation of that provision.

*Id.*

Thus, far from taking any specific action to preempt any state law or regulation governing competitor access to incumbent facilities, the FCC merely acted in the *Triennial Review Order* to restate the already-existing bounds on state action recognized under existing doctrines of conflict preemption. Furthermore, the FCC's *Triennial Review Order* recognized

**COVAD PETITION - SOUTH DAKOTA - 12**

that “merely an inconsistency” between state rules providing for competitor access and federal unbundling rules would be insufficient to create such a conflict. Instead, consistent with existing doctrines of conflict preemption, the FCC recognized that the state laws would have to “substantially prevent implementation” of Section 251 in order to create conflict preemption.

Of course, the FCC’s *Triennial Review Order* could not have concluded that all state rules unbundling network elements not required to be unbundled nationally by the FCC create conflict preemption. Had the FCC reached such a conclusion, the FCC would have rendered Section 251(d)(3)’s savings provisions a nullity, never operating to preserve any meaningful state law authority in any circumstance. Rather than reaching such a conclusion, the FCC created a process for parties to determine whether a “particular state unbundling obligation” requiring the unbundling of network elements not unbundled nationally by FCC rules creates a conflict with federal law. The *Triennial Review Order* invited parties to seek declaratory rulings from the FCC regarding individual state obligations. An invitation to seek declaratory ruling, however, hardly amounts to preemption in itself – it merely creates a process for interested parties to establish in future proceedings before the FCC whether or not a particular state rule conflicts with federal law.

Moreover, the FCC gives some direction on the circumstances that would lead the FCC to decline a finding of conflict preemption for state rules unbundling network elements the FCC has declined to unbundle nationally. Specifically, in its discussion of state law authority to unbundle network elements, the FCC states that “the availability of certain network elements may vary between geographic regions.” *Triennial Review Order*, ¶ 196. Indeed, according to the FCC, such a granular “approach is required under *USTA*.” *Triennial Review Order*, ¶ 196 (citing *USTA*, 290 F.3d at 427). Thus, if the requisite state-specific circumstances exist in a particular state, state rules unbundling network elements not required to be unbundled nationally

are permissible in that state, and would not substantially prevent the implementation of Section 251.

In addition, state determinations to require the unbundling of elements also subject to the unbundling requirements of Section 271 of the Act, such as switching, dedicated transport and loops, could not, as a matter of law, be subject to preemption analysis. The inclusion of these requirements in the Act clearly indicates that, far from frustrating the implementation of the Act, these unbundling requirements are critical components of the Act.

It should also be noted, however, that Qwest has not yet sought to remove the elements requested by Covad from its Statement of Generally Available Terms (SGAT) in South Dakota. Qwest must continue to provide access to these elements on the rates, terms and conditions contained in Qwest's SGAT<sup>6</sup> unless and until Qwest is granted permission to remove them. As a result, Covad is not asking for access to any new essential facilities; it is merely asking this Commission to confirm that elements listed in Qwest's South Dakota SGAT remain available. Should Qwest wish to implement its proposals in this arbitration, it would be required to initiate a proceeding to reclassify the elements.

Consistent with the discussion above, Covad has proposed language maintaining access to network elements that may, in the future, no longer be available pursuant to Section 251 of the Act, but must nevertheless remain available pursuant to Section 271 of the Act and South Dakota law.

**H. Proposed Schedule for Implementing Terms and Conditions Imposed in the Arbitration**

11. Covad proposes that terms and conditions imposed in the arbitration take effect immediately upon their approval by the Commission.

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<sup>6</sup> See <http://www.qwest.com/wholesale/downloads/2005/050225/SD-ExhibitA2-17-05.xls>

**I. Recommendation as to What Information Other Parties to the Negotiation Should Provide**

12. Covad does not anticipate the need for discovery in this matter, but reserves its right to seek such information as may become necessary for an adequate development of the record pertinent to the determination of the issue presented for resolution by the Commission.

**REQUEST FOR RELIEF**

WHEREFORE, Covad respectfully requests that the Commission grant the following relief:

- (a) Arbitrate the unresolved issues between Covad and Qwest;
- (b) Issue an order directing the Parties to submit an Agreement reflecting: (i) the agreed upon language in Exhibit A and (ii) the resolution in this arbitration proceeding of the unresolved issues in accordance with the recommendations made by Covad herein and in Exhibit A;
- (c) Retain jurisdiction of this arbitration until the Parties have submitted an Agreement for approval by the Commission in accordance with section 252(e) of the Act;
- (d) Further retain jurisdiction of this arbitration and the Parties hereto until Qwest has complied with all implementation time frames specified in the arbitrated Agreement and has fully implemented the Agreement; and
- (e) Take such other and further actions as it deems necessary and appropriate.

Respectfully submitted, this 28th day of March, 2005.

DIECA COMMUNICATIONS, INC., D/B/A  
COVAD COMMUNICATIONS COMPANY

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

  
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## CERTIFICATE OF SERVICE

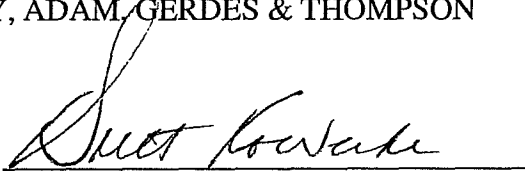
I hereby certify that on the 28<sup>th</sup> day of March, 2005, I mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Linda Miles  
Qwest Corporation  
1600 7th Ave, Room 1809  
Seattle, WA 98191

John Devaney  
Mary Rose Hughes  
Perkins Coie, LLP  
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BY:



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**PETITION OF DIECA COMMUNICATIONS, INC., D/B/A COVAD  
COMMUNICATIONS COMPANY FOR ARBITRATION**

**EXHIBIT A**

**Draft Interconnection Agreement**

***One Original and ten copies delivered separately to the South Dakota Public Utilities  
Commission***

**Exhibit A  
South Dakota\***

DRAFT - 3-24-05											
New									Notes		
			Recurring	Recurring, per Mile	Nonrecurring	REC	REC, per Mile	NRC			
<b>6.0 Resale - Intentionally Left Blank</b>											
<b>7.0 Interconnection - Intentionally Left Blank</b>											
<b>8.0 Collocation</b>											
<b>8.1 All Collocation</b>											
8.1.1 Planning and Engineering											
8.1.1.1 Quote Preparation Fee					\$1,000.00			A			
8.1.1.2 Cable Augment Quote Preparation Fee					\$1,409.96			5			
8.1.2 Entrance Facility											
8.1.2.1 Standard Shared, per Fiber			\$6.81		\$666.68	5		5			
8.1.2.2 Cross Connect, per Fiber			\$7.02		\$781.94	5		5			
8.1.2.3 Express, per Cable			\$109.11		\$9,741.28	5		5			
8.1.3 Cable Splicing											
8.1.3.1 Fiber, per Set-up					\$474.70			A			
8.1.3.2 Per Fiber Spliced					\$37.95			A			
8.1.4 Power Usage											
8.1.4.1 -48 Volt DC Power Usage, per Ampere, per Month			\$15.24			A					
8.1.5 AC Power Feed											
8.1.5.1 Intentionally Left Blank											
8.1.5.2 AC Power Feed – per Foot, per Month											
8.1.5.2.1 20 Amp, Single Phase			\$0.0151		\$8.14	5		5			
8.1.5.2.2 20 Amp, Three Phase			\$0.0187		\$10.10	5		5			
8.1.5.2.3 30 Amp, Single Phase			\$0.0163		\$8.78	5		5			
8.1.5.2.4 30 Amp, Three Phase			\$0.0223		\$12.06	5		5			
8.1.5.2.5 40 Amp, Single Phase			\$0.0191		\$10.33	5		5			
8.1.5.2.6 40 Amp, Three Phase			\$0.0263		\$14.21	5		5			
8.1.5.2.7 50 Amp, Single Phase			\$0.0227		\$12.25	5		5			
8.1.5.2.8 50 Amp, Three Phase			\$0.0317		\$17.10	5		5			
8.1.5.2.9 60 Amp, Single Phase			\$0.0257		\$13.85	5		5			
8.1.5.2.10 60 Amp, Three Phase			\$0.0365		\$19.69	5		5			
8.1.5.2.11 100 Amp, Single Phase			\$0.0318		\$17.15	5		5			
8.1.5.2.12 100 Amp, Three Phase			\$0.0496		\$26.78	5		5			
8.1.6 Inspector Labor, per Half Hour											
8.1.6.1 Regular Hours Rate					\$27.70			A			
8.1.6.2 After Hours Rate, minimum 3 hours					\$35.99			A			
8.1.7 Channel Regeneration											
8.1.7.1 DS1			\$0.00		\$0.00	7		7			
8.1.7.2 DS3			\$0.00		\$0.00	7		7			
8.1.8 Collocation Terminations											
8.1.8.1 Shared Access											
8.1.8.1.1 Intentionally Left Blank											
8.1.8.1.2 Block Terminations											
8.1.8.1.2.1 DS0, per 100			\$1.10		\$617.55	A		A			
8.1.8.1.2.2 DS1, per 28			\$0.76		\$449.96	A		A			
8.1.8.1.2.3 DS3, per Each Termination			\$0.43		\$249.87	A		A			
8.1.8.1.3 Per Termination											
8.1.8.1.3.1 DS0			\$0.0100		\$5.18	A		A			
8.1.8.1.3.2 DS1			\$0.0200		\$12.26	A		A			
8.1.8.1.3.3 DS3			\$0.0300		\$185.78	A		A			
8.1.8.1.4 Fiber Termination											
8.1.8.1.4.1 Terminations, per 12 fibers			\$28.99		\$1,658.35	5		5			
8.1.8.1.4.2 Additional Connector (if applicable)			\$0.84		\$450.93	5		5			
8.1.8.1.4.3 Cable Racking, Shared, per 12 fibers			\$26.85			5					
8.1.8.1.4.4 Cable Racking Dedicated			\$2.79		\$1,507.33	5		5			
8.1.9 Security											
8.1.9.1 Per Employee, per Card			\$0.85			5					
8.1.9.2 Card Access per Employee, per Office			\$7.04			5					
8.1.10 Composite Clock / Central Office Clock Synchronization											



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	Recurring	Recurring, per Mile	Nonrecurring	REC Mile	REC Port	NBC
8.1.10.1 Synchronization – Composite Clock, per Port	\$8.49			5		
8.1.11 -48 Volt DC Power Cable, per Foot, Per A and B Feeder						
8.1.11.1 20 Amp Feed, per Feed	\$0.11		\$70.21	A		A
8.1.11.2 Intentionally Left Blank						
8.1.11.3 40 Amp Feed, per Feed	\$0.15		\$95.20	A		A
8.1.11.4 Intentionally Left Blank						
8.1.11.5 60 Amp Feed, per Feed	\$0.17		\$107.22	A		A
8.1.12 Space Availability Charge			\$340.32			5
8.1.13 Collocation Space Reservation Fee			The charge will be 25% of Nonrecurring Fee			
8.1.14 Collocation Space Option Administration Fee			\$1,146.74			5
8.1.15 Collocation Space Option Fee	\$2.00			2		
8.1.16 Viewing Available Space (prior to quote acceptance)			\$150.00			1
<b>8.2 Virtual Collocation</b>						
8.2.1 Planning and Engineering						
8.2.1.1 Quote Preparation Fee, Per Collocation Ordered			\$4,469.55			5
8.2.2 Maintenance Labor, per Half Hour						
8.2.2.1 Regular Hours Rate			\$24.54			A
8.2.2.2 After Hours Rate			\$32.64			A
8.2.3 Training Labor, per Half Hour						
8.2.3.1 Regular Hours Rate			\$24.54			A
8.2.4 Equipment Bay, per Shelf	\$3.88			A		
8.2.5 Engineering Labor, per Half Hour						
8.2.5.1 Regular Hours Rate			\$23.93			A
8.2.5.2 After Hours Rate			\$32.01			A
8.2.6 Installation Labor, per Half Hour						
8.2.6.1 Regular Hours Rate			\$27.70			A
8.2.6.2 After Hours Rate			\$35.99			A
8.2.7 Rent						
8.2.7.1 Floor Space Lease, per Square Foot						
8.2.7.1.1 Zone 1	\$2.75			A		
8.2.7.1.2 Zone 2	\$2.26			A		
8.2.7.1.3 Zone 3	\$2.06			A		
8.2.8 Intentionally Left Blank						
8.2.9 Power Plant						
8.2.9.1 DC Power Cable						
8.2.9.1.1 20 Amp, Power Feed, per Feed	\$8.37		\$4,521.83	5		5
8.2.9.1.2 30 Amp, Power Feed, per Feed	\$9.53		\$5,148.43	5		5
8.2.9.1.3 40 Amp, Power Feed, per Feed	\$11.52		\$6,218.08	5		5
8.2.9.1.4 Intentionally Left Blank						
8.2.9.1.5 60 Amp, Power Feed, per Feed	\$20.39		\$11,012.44	5		5
8.2.9.1.6 100 Amp, Power Feed, per Feed	\$34.40		\$18,573.95	5		5
8.2.9.1.7 200 Amp, Power Feed, per Feed	\$64.03		\$34,575.21	5		5
8.2.9.1.8 300 Amp, Power Feed, per Feed	\$100.69		\$54,367.53	5		5
8.2.9.1.9 400 Amp, Power Feed, per Feed	\$142.96		\$77,194.68	5		5
<b>8.3 Cageless Physical Collocation</b>						
8.3.1 Planning and Engineering Fee						
8.3.1.1 Quote Preparation Fee, per Collocation Ordered			\$4,469.55			5, 6
8.3.1.2 Augment Quote Preparation Fee			\$1,445.39			1
8.3.2 Space Construction and Site Preparation						
8.3.2.1 Site Preparation Fee			ICB			3
8.3.2.2 2 Bays	\$39.45		\$21,299.26	5		5
8.3.2.3 Intentionally Left Blank						
8.3.2.4 Intentionally Left Blank						
8.3.2.5 Each Additional Bay, per Bay	\$0.87		\$471.75	5		5
8.3.2.6 Intentionally Left Blank						

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			Recurring	Recurring, per Mile	Nonrecurring	REC Mile	REC per Mile	NRC
8.3.2.7	DC Power Cable							
8.3.2.7.1	20 Amp Power Feed		\$8.37		\$4,521.83	5		5
8.3.2.7.2	30 Amp Power Feed		\$9.53		\$5,148.43	5		5
8.3.2.7.3	40 Amp Power Feed		\$11.52		\$6,218.08	5		5
8.3.2.7.4	60 Amp Power Feed		\$20.39		\$11,012.44	5		5
8.3.2.7.5	100 Amp Power Feed		\$34.40		\$18,573.95	5		5
8.3.2.7.6	200 Amp Power Feed		\$64.03		\$34,575.21	5		5
8.3.2.7.7	300 Amp Power Feed		\$100.69		\$54,367.53	5		5
8.3.2.7.8	400 Amp Power Feed		\$142.96		\$77,194.68	5		5
8.3.3	Floor Space Lease, per Square Foot							
8.3.3.1	Zone 1		\$2.75			A		
8.3.3.2	Zone 2		\$2.26			A		
8.3.3.3	Zone 3		\$2.06			A		
8.4	Caged Physical Collocation							
8.4.1	Planning and Engineering Fee							
8.4.1.1	Quote Preparation Fee, per Collocation Ordered				\$4,469.55			5, 6
8.4.1.2	Augment Quote Preparation Fee				\$1,445.39			1
8.4.2	Space Construction and Site Preparation							
8.4.2.1	Site Preparation Fee				ICB			3
8.4.2.2	Intentionally Left Blank							
8.4.2.3	Intentionally Left Blank							
8.4.2.4	Space Construction							
8.4.2.4.1	Cage: Up to 100 Sq. Ft.		\$68.56		\$37,019.76	5		5
8.4.2.4.2	Cage: 101 to 200 Sq. Ft.		\$60.82		\$32,842.03	5		5
8.4.2.4.3	Cage: 201 to 300 Sq. Ft.		\$75.11		\$40,554.00	5		5
8.4.2.4.4	Cage: 301 to 400 Sq. Ft.		\$78.69		\$42,491.50	5		5
8.4.2.5	Intentionally Left Blank							
8.4.2.6	DC Power Cable							
8.4.2.6.1	20 Amp, Power Feed, per Feed		\$10.41		\$5,621.76	5		5
8.4.2.6.2	30 Amp, Power Feed, per Feed		\$11.47		\$6,192.23	5		5
8.4.2.6.3	40 Amp, Power Feed, per Feed		\$13.71		\$7,404.38	5		5
8.4.2.6.4	60 Amp, Power Feed, per Feed		\$22.64		\$12,222.79	5		5
8.4.2.6.5	100 Amp, Power Feed, per Feed		\$36.84		\$19,890.97	5		5
8.4.2.6.6	200 Amp, Power Feed, per Feed		\$68.57		\$37,026.82	5		5
8.4.2.6.7	300 Amp, Power Feed, per Feed		\$107.33		\$58,222.54	5		5
8.4.2.6.8	400 Amp, Power Feed, per Feed		\$153.10		\$82,668.28	5		5
8.4.3	Space Construction - Fencing Credit							
8.4.3.1	Cage: Up to 100 Sq. Ft.		(\$10.35)		(\$5,590.02)	5		5
8.4.3.2	Cage: 101 - 200 Sq. Ft.		(\$12.91)		(\$6,969.92)	5		5
8.4.3.3	Cage: 201 - 300 Sq. Ft.		(\$14.50)		(\$7,828.84)	5		5
8.4.3.4	Cage: 301 - 400 Sq. Ft.		(\$16.01)		(\$8,645.52)	5		5
8.4.4	Floor Space Lease, per Square Foot							
8.4.4.1	Zone 1		\$2.75			A		
8.4.4.2	Zone 2		\$2.26			A		
8.4.4.3	Zone 3		\$2.06			A		
8.4.5	Intentionally Left Blank							
8.4.6	Intentionally Left Blank							
8.4.7	Intentionally Left Blank							
8.4.8	Grounding							
8.4.8.1	2/0 AWG, per Foot		\$0.0179		\$9.68	5		5
8.4.8.2	1/0 AWG, per Foot		\$0.0316		\$17.04	5		5
8.4.8.3	4/0 AWG, per Foot		\$0.0371		\$20.05	5		5
8.4.8.4	350 kcmil, per Foot		\$0.0479		\$25.88	5		5
8.4.8.5	500 kcmil, per Foot		\$0.0555		\$29.95	5		5
8.4.8.6	750 kcmil, per Foot		\$0.0846		\$45.66	5		5
8.5	Adjacent Collocation				ICB			3
8.6	Remote Collocation							
8.6.1	Physical & Virtual Remote Collocation							
8.6.1.1	Space, per Standard Mounting Unit		\$0.53		\$728.98	5+		5+
8.6.1.2	FDI Terminations, per 25 Pair		\$0.32		\$531.18	5+		5+
8.6.1.3	Power Usage							
8.6.1.3.1	-48 Volt DC Power Usage, per Ampere, per Month		\$15.24			A		

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		Recurring	Recurring, per Mile	Nonrecurring	REC Mile	REC per Mile	NFC
8.6.2	Adjacent Remote Collocation			ICB			3
8.6.3	Additional Virtual Remote Collocation Elements						
8.6.3.1	Flat Charge, per Job			\$36.96			5
8.6.3.2	Engineering Rate, per Half Hour			\$36.44			5
8.6.3.3	Maintenance, per Half Hour			\$30.05			5
8.6.3.4	Installation, per Half Hour			\$30.05			5
8.6.3.5	Training, per Half Hour			\$30.05			5
8.7	CLEC to CLEC						
8.7.1	Design Engineering & Installation (Design Engineering & Installation - No Cables)						
8.7.1.1	Fiber Flat Charge			\$1,458.64			5
8.7.1.2	Flat Charge			\$815.31			5
8.7.2	Cable Racking, per Foot						
8.7.2.1	DS0	\$0.18445			5		
8.7.2.2	DS1	\$0.19724			5		
8.7.2.3	DS3	\$0.16761			5		
8.7.2.4	Fiber	\$1.52558			5		
8.7.3	Virtual Connections (if applicable - Connections only No Cables)						
8.7.3.1	DS0, per 100 Connections			\$195.47			5
8.7.3.2	DS1, per 28 Connections			\$91.54			5
8.7.3.3	DS3, per 1 Connection			\$6.25			5
8.7.4	Cable Hole (if Applicable)			\$470.49			5
8.7.5	CLEC to CLEC Cross-Connection			\$223.74			5
8.8	Interconnection Distribution Frame (ICDF) Collocation			ICB			3
8.9	Application to Request Cancellation			QPF, Prorated Job Costs			
8.10	Microwave Entrance Facility	ICB		ICB	3		3
8.11	Intentionally Left Blank						
8.12	Intentionally Left Blank						
8.13	DC Power Reduction						
8.13.1	Reduce Primary or Secondary Feed Value						
8.13.1.1	Initial Amount Less Than or Equal to 60 Amps						
8.13.1.1.1	Quote Preparation Fee			\$441.00			4
8.13.1.1.2	Power Reduction Charge			\$346.00			4
8.13.1.1.3	Location change from Power Board to BDFB			ICB			3
8.13.1.2	Initial Amount is Greater Than 60 Amps & Maintaining 60 Amps						
8.13.1.2.1	Quote Preparation Fee			\$441.00			4
8.13.1.2.2	Power Reduction Charge			\$587.00			4
8.13.2	Additional Secondary Feed Elements						
	Power Restored to Qwest Inventory			\$68.92			4
	Monthly Maintenance	\$37.00			4		
8.13.3	Power Restoration, applied to Primary & Secondary Feed			ICB			3
8.14	Collocation Transfer of Responsibility						
8.14.1	Interconnection Facility Options - Wireline and Wireless Local Interconnection Service Trunks						
8.14.1.1	Per Trunk Group			\$30.89			1
8.14.1.2	Per Facility Circuit			\$30.89			1
8.14.2	Transfer of Responsibility Assessment Fee			\$1,058.00			1
8.14.3	Network System Administration Fee			\$1,663.00			1
8.14.4	Unbundled Loop, per Circuit			\$30.89			1
8.14.5	Sub-Loop, and Shared Distribution Loop, per Circuit			\$30.89			1
8.14.6	Line Sharing and Line Splitting, per Circuit			\$30.89			1
8.14.7	Unbundled Dedicated Interoffice Transport, per Circuit			\$30.89			1
8.14.8	Enhanced Extended Loop / Loop MUX Combination, per Circuit			\$30.89			1
8.14.9	Loop Splitting, per Circuit			\$30.89			1
8.14.10	Unbundled Dark Fiber, per Circuit			\$30.89			1
8.15	Collocation Available Inventory						
8.15.1	Standard Sites						
8.15.1.1	Removal of Terminations						
8.15.1.1.1	DSO (per 100)			ICB			3

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				Recurring	Recurring, per Mile	Nonrecurring	REG	REC Mile	REC per Mile	NFC
	8.15.1.1.2	DS1 (per termination)				ICB				3
	8.15.1.1.3	DS3 (per termination)				ICB				3
	8.15.1.1.4	OCN (per 12 fibers)				ICB				3
	8.15.1.2	Quote Preparation Fee								
	8.15.1.2.1	Caged Collocation				\$4,469.55				5, 6
	8.15.1.2.2	Cageless Collocation				\$4,469.55				5, 6
	8.15.2	Special Sites								
	8.15.2.1	Special Site Assessment Fee				\$1,058.00				4
	8.15.2.2	Network Systems Assessment Fee				\$1,663.00				4
	8.15.2.3	Site Survey				\$150.00				4
	8.15.3	Re-usable Elements				ICB				3
	8.16	Collocation Decommissioning								
	8.16.1	Additional Labor Other – Basic				\$28.19				5
	8.16.2	Additional Labor Other – Overtime				\$37.65				5
	8.16.3	Additional Labor Other – Premium				\$47.13				5
	8.16.4	Additional Dispatch				\$123.51				5
	8.17	Joint Testing								
	8.17.1	Virtual Collocation Maintenance Charge (price contains a one hour set up fee)				\$49.08				1
	8.17.2	Per half-hour test time fee at the Virtual Collocation Charge				\$24.54				1
	Unbundled Network Elements (UNEs)									
	9.1	Interconnection Tie Pairs (ITP), per Termination								
	9.1.1	DS0								
	9.1.1.1	DS0 2-Wire		\$1.14			A			
	9.1.1.2	DS0 4-Wire		\$1.45			A			
	9.1.2	DS1		\$12.57			A			
	9.1.3	DS3		\$36.56			A			
9.0	9.2	Unbundled Loops								
	9.2.1	Analog Loops				See 9.2.4				
	9.2.1.1	2-Wire Voice Grade Loop								
	9.2.1.1.1	Zone 1		\$15.20			#			
	9.2.1.1.2	Zone 2		\$16.56			#			
	9.2.1.1.3	Zone 3		\$21.77			#			
	9.2.1.2	Intentionally Left Blank								
	9.2.1.3	4-Wire Voice Grade Loop								
	9.2.1.3.1	Zone 1		\$29.82			#			
	9.2.1.3.2	Zone 2		\$32.50			#			
	9.2.1.3.3	Zone 3		\$42.72			#			
	9.2.2	Nonloaded Loops				See 9.2.4				
	9.2.2.1	2-Wire Nonloaded Loop								
	9.2.2.1.1	Zone 1		\$15.20			#			
	9.2.2.1.2	Zone 2		\$16.56			#			
	9.2.2.1.3	Zone 3		\$21.77			#			
	9.2.2.2	Intentionally Left Blank								
	9.2.2.3	4-Wire Nonloaded Loop								
	9.2.2.3.1	Zone 1		\$29.82			#			
	9.2.2.3.2	Zone 2		\$32.50			#			
	9.2.2.3.3	Zone 3		\$42.72			#			
	9.2.2.4	Cable Unloading / Bridge Tap Removal				\$58.50				8
	9.2.3	Digital Capable Loops								
	9.2.3.1	Basic Rate ISDN / xDSL - I Capable / ADSL Compatible Loop				See 9.2.4				
	9.2.3.1.1	Zone 1		\$15.20			#			
	9.2.3.1.2	Zone 2		\$16.56			#			
	9.2.3.1.3	Zone 3		\$21.77			#			
	9.2.3.2	Intentionally Left Blank								
	9.2.3.3	DS1 Capable Loop				See-9.2.5				
	9.2.3.3.1	Zone 1		\$120.17			#			
	9.2.3.3.2	Zone 2		\$120.93			#			
	9.2.3.3.3	Zone 3		\$123.65			#			
	9.2.3.4	DS3 Capable Loop				See-9.2.6				
	9.2.3.4.1	Zone 1		\$765.48			#			
	9.2.3.4.2	Zone 2		\$799.74			#			

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		Recurring	Recurring per Mile	Nonrecurring	REC #	REC per Mile	NO
9.2.3.4.3	Zone 3	\$1,032.54			#		
9.2.3.5	Intentionally Left Blank						
9.2.3.6	2-Wire Extension Technology	\$21.49			A		
9.2.4	Loop Installation Charges for 2 & 4 wire Analog / Non - Loaded, ISDN BRI Capable, xDSL - I Capable, and ADSL Compatible Loop where conditioning is not required.	See 9.2.1, 9.2.2, & 9.2.3.1					
9.2.4.1	Basic Installation						
9.2.4.1.1	First			\$55.27			#
9.2.4.1.2	Each Additional			\$48.77			#
9.2.4.2	Basic Installation with Performance Testing						
9.2.4.2.1	First			\$142.10			#
9.2.4.2.2	Each Additional			\$86.61			#
9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
9.2.4.3.1	First			\$171.87			#
9.2.4.3.2	Each Additional			\$94.09			#
9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
9.2.4.4.1	First			\$59.81			#
9.2.4.4.2	Each Additional			\$53.32			#
9.2.4.5	Basic Installation with Cooperative Testing						
9.2.4.5.1	First			\$142.10			#
9.2.4.5.2	Each Additional			\$86.61			#
9.2.4.6	Batch Hot Cut						
9.2.4.6.1	Per Loop Rate			\$45.41			1
9.2.4.6.2	IDLC Conversion Work - in addition to the Per Loop Rate above			\$78.04			1
9.2.5	DS1 Loop Installation Charges	See 9.2.3.3					
9.2.5.1	Basic Installation						
9.2.5.1.1	First			\$179.80			5
9.2.5.1.2	Each Additional			\$122.82			5
9.2.5.2	Basic Installation with Performance Testing						
9.2.5.2.1	First			\$315.96			5
9.2.5.2.2	Each Additional			\$217.23			5
9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
9.2.5.3.1	First			\$356.55			5
9.2.5.3.2	Each Additional			\$217.23			5
9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
9.2.5.4.1	First			\$189.06			5
9.2.5.4.2	Each Additional			\$132.07			5
9.2.5.5	Basic Installation with Cooperative Testing						
9.2.5.5.1	First			\$315.96			5
9.2.5.5.2	Each Additional			\$217.23			5
9.2.6	DS3 Loop Installation Charges	See 9.2.3.4					
9.2.6.1	Basic Installation						
9.2.6.1.1	First			\$179.80			5
9.2.6.1.2	Each Additional			\$122.82			5
9.2.6.2	Basic Installation with Performance Testing						
9.2.6.2.1	First			\$315.96			5
9.2.6.2.2	Each Additional			\$217.23			5
9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation						
9.2.6.3.1	First			\$356.55			5
9.2.6.3.2	Each Additional			\$217.23			5
9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation						
9.2.6.4.1	First			\$189.06			5
9.2.6.4.2	Each Additional			\$132.07			5
9.2.6.5	Basic Installation with Cooperative Testing						

**Exhibit A  
South Dakota\***

		Recurring	Recurring, per /Mile	Nonrecurring	REC Mile	REC/Port Mile	NFO
9.2.6.5.1	First			\$315.96			5
9.2.6.5.2	Each Additional			\$217.23			5
9.2.7	Intentionally Left Blank						
9.2.8	Private Line to Unbundled Loop Conversions			\$37.36			5
<b>9.3</b>	<b>Subloop</b>						
9.3.1	2-Wire Distribution Loop, applies to both Analog and Nonloaded						
9.3.1.1	First Loop			\$112.61			5
9.3.1.2	Each Additional Loop			\$32.32			5
9.3.1.3	First & Each Additional 2-Wire Distribution Loop						
9.3.1.3.1	Zone 1	\$10.68			#		
9.3.1.3.2	Zone 2	\$11.64			#		
9.3.1.3.3	Zone 3	\$15.30			#		
9.3.2	Intentionally Left Blank						
9.3.3	Intra-Building Cable	\$0.52			5		
9.3.3.1	No Dispatch First			\$58.18			5
9.3.3.2	No Dispatch Each Additional			\$24.27			5
9.3.3.3	Dispatch First			\$103.10			5
9.3.3.4	Dispatch Each Additional			\$34.29			5
9.3.4	Feeder Loop						
9.3.4.1	DS1 Capable Feeder Loop						
9.3.4.1.1	First Loop			\$328.85			5
9.3.4.1.2	Each Additional			\$233.25			5
9.3.4.1.3	First & Each Additional DS1 Capable Feeder Loop						
9.3.4.1.3.1	Zone 1	\$104.90			#		
9.3.4.1.3.2	Zone 2	\$105.66			#		
9.3.4.1.3.3	Zone 3	\$108.39			#		
9.3.5	MTE Terminal Subloop Access						
9.3.5.1	Subloop MTE - POI Site Inventory, per Inventory			\$135.07			5
9.3.5.2	MTE - POI Rearrangement of Facilities			ICB			3
9.3.5.3	MTE - POI Construction of New SPOI	ICB			3		
9.3.6	Intentionally Left Blank						
9.3.7	Field Connection Point (FCP)						
9.3.7.1	Feasibility Fee / Quote Preparation Fee			\$1,343.90			5
9.3.7.2	FCP Reclassification			\$595.50			5
9.3.8	Intentionally Left Blank						
9.3.9	Intentionally Left Blank						
9.3.10	Intentionally Left Blank						
9.3.11	Intentionally Left Blank						
9.3.12	Construction Fee	ICB		ICB	3		3
<b>9.4</b>	<b>Shared Services</b>						
9.4.1	Shared Loop, per Loop	\$0.00		\$37.27	#, 11		1
9.4.2	Line Splitting						
9.4.2.1	Basic Installation Charge for Line Splitting			\$37.27			1
9.4.3	Loop Splitting						
9.4.3.1	Basic Installation Charge for Loop Splitting			\$37.27			1
9.4.4	OSS, per Order	\$3.21			5		
9.4.5	Reclassification Charge			ICB			3
9.4.6	Splitter Shelf Charge	\$4.39		\$532.56	5		5
9.4.7	Splitter TIE Cable Connections						
9.4.7.1	Splitter in the Common Area -- Data to 410 block	\$5.19		\$2,804.98	5		5
9.4.7.2	Splitter in the Common Area -- Data direct to CLEC	\$5.52		\$2,981.61	5		5
9.4.7.3	Splitter on the IDF - Data to 410 block	\$1.58		\$853.16	5		5
9.4.7.4	Splitter on the IDF - Data direct to CLEC	\$3.11		\$1,679.72	5		5
9.4.7.5	Splitter on the MDF - Data to 410 block	\$1.63		\$882.73	5		5
9.4.7.6	Splitter on the MDF - Data direct to CLEC	\$3.69		\$1,991.96	5		5
9.4.8	Engineering			\$1,300.49			5
<b>9.5</b>	<b>Network Interface Device (NID)</b>			\$58.58			A

**Exhibit A  
South Dakota\***

		Recurring	Recurring, per Mile	Nonrecurring	REC Mile	REC per Mile	NRG
<b>9.6</b>	<b>Unbundled Dedicated Interoffice Transport (UDIT)</b>						
9.6.1	DS0 UDIT ( <i>Recurring Fixed &amp; per Mile</i> )			\$276.13			5
	9.6.1.1 Over 0 to 8 Miles	\$17.14	\$0.09		A	A	
	9.6.1.2 Over 8 to 25 Miles	\$17.12	\$0.12		A	A	
	9.6.1.3 Over 25 to 50 Miles	\$17.13	\$0.11		A	A	
	9.6.1.4 Over 50 Miles	\$17.14	\$0.07		A	A	
9.6.2	DS1 UDIT ( <i>Recurring Fixed &amp; per Mile</i> )			\$321.82			5
	9.6.2.1 Over 0 to 8 Miles	\$34.75	\$0.95		A	A	
	9.6.2.2 Over 8 to 25 Miles	\$34.76	\$1.82		A	A	
	9.6.2.3 Over 25 to 50 Miles	\$34.76	\$1.77		A	A	
	9.6.2.4 Over 50 Miles	\$34.75	\$1.23		A	A	
9.6.3	DS3 UDIT ( <i>Recurring Fixed &amp; per Mile</i> )			\$321.82			5
	9.6.3.1 Over 0 to 8 Miles	\$236.22	\$10.43		A	A	
	9.6.3.2 Over 8 to 25 Miles	\$236.53	\$10.83		A	A	
	9.6.3.3 Over 25 to 50 Miles	\$236.71	\$9.91		A	A	
	9.6.3.4 Over 50 Miles	\$243.94	\$24.44		A	A	
9.6.4	Intentionally Left Blank						
9.6.5	Intentionally Left Blank						
9.6.6	Intentionally Left Blank						
9.6.7	UDIT DS0 Channel Performance						
	9.6.7.1 DS0 Low Side Channelization	\$14.76			5		
	9.6.7.2 DS1 / DS0 Low Side Channelization	\$8.42		\$206.94	5		5
9.6.8	Multiplexing (Stand Alone)						
	9.6.8.1 DS1 to DS0	\$181.28		\$280.77	A		A
	9.6.8.2 DS3 to DS1	\$298.66		\$3,011.44	5		5
9.6.9	Intentionally Left Blank						
9.6.10	Intentionally Left Blank						
9.6.11	UDIT Rearrangement						
	9.6.11.1 DS0 Single Office			\$169.61			5
	9.6.11.2 DS0 Dual Office			\$213.10			5
	9.6.11.3 High Capacity, Single Office			\$232.73			5
	9.6.11.4 High Capacity, Dual Office			\$260.79			5
<b>9.7</b>	<b>Unbundled Dark Fiber (UDF) - Intentionally Left Blank</b>						
<b>9.8</b>	<b>Shared Transport - Intentionally Left Blank</b>						
<b>9.9</b>	<b>Unbundled Customer Controlled Rearrangement Element (UCCRE) - Intentionally Left Blank</b>						
<b>9.10</b>	<b>Intentionally Left Blank</b>						
<b>9.11</b>	<b>Local Switching - Intentionally Left Blank</b>						
<b>9.12</b>	<b>Customized Routing - Intentionally Left Blank</b>						
<b>9.13</b>	<b>Intentionally Left Blank</b>						
<b>9.14</b>	<b>Intentionally Left Blank</b>						
<b>9.15</b>	<b>Intentionally Left Blank</b>						
<b>9.16</b>	<b>Intentionally Left Blank</b>						
<b>9.17</b>	<b>Intentionally Left Blank</b>						
<b>9.18</b>	<b>Intentionally Left Blank</b>						
<b>9.19</b>	<b>Construction Charges</b>						
9.19.1	Intentionally Left Blank						
9.19.2	Construction of Network Capacity Facilities or Space for Access to or use of UNEs	ICB		ICB	3		3
<b>9.20</b>	<b>Miscellaneous Charges</b>						

**Exhibit A  
South Dakota\***

		Recurring	Recurring, per Mile	Nonrecurring	REC	REC, per Mile	NFC
9.20.1	Additional Engineering, per Half Hour or fraction thereof						
9.20.1.1	Additional Engineering – Basic			\$32.34			5
9.20.1.2	Additional Engineering – Overtime			\$40.00			5
9.20.2	Additional Labor Installation, per Half Hour or fraction thereof						
9.20.2.1	Additional Labor Installation – Overtime			\$9.19			5
9.20.2.2	Additional Labor Installation – Premium			\$18.39			5
9.20.3	Additional Labor Other, per Half Hour or fraction thereof						
9.20.3.1	Additional Labor Other – Basic			\$28.19			5
9.20.3.2	Additional Labor Other – Overtime			\$37.65			5
9.20.3.3	Additional Labor Other – Premium			\$47.13			5
9.20.4	Testing and Maintenance, per Half Hour or fraction thereof						
9.20.4.1	Testing and Maintenance – Basic			\$29.95			5
9.20.4.2	Testing and Maintenance – Overtime			\$40.00			5
9.20.4.3	Testing and Maintenance – Premium			\$50.06			5
9.20.5	Maintenance of Service, per Half Hour or fraction thereof						
9.20.5.1	Maintenance of Service – Basic			\$28.19			5
9.20.5.2	Maintenance of Service – Overtime			\$37.65			5
9.20.5.3	Maintenance of Service – Premium			\$47.13			5
9.20.6	Additional Cooperative Acceptance Testing, per Half Hour or fraction thereof						
9.20.6.1	Additional Cooperative Acceptance Testing – Basic			\$29.95			5
9.20.6.2	Additional Cooperative Acceptance Testing – Overtime			\$40.00			5
9.20.6.3	Additional Cooperative Acceptance Testing – Premium			\$50.06			5
9.20.7	Nonscheduled Cooperative Testing, per Half Hour or fraction thereof						
9.20.7.1	Nonscheduled Cooperative Testing - Basic			\$29.95			5
9.20.7.2	Nonscheduled Cooperative Testing – Overtime			\$40.00			5
9.20.7.3	Nonscheduled Cooperative Testing – Premium			\$50.06			5
9.20.8	Nonscheduled Manual Testing, per Half Hour or fraction thereof						
9.20.8.1	Nonscheduled Manual Testing – Basic			\$29.95			5
9.20.8.2	Nonscheduled Manual Testing – Overtime			\$40.00			5
9.20.8.3	Nonscheduled Manual Testing – Premium			\$50.06			5
9.20.9	Cooperative Scheduled Testing						
9.20.9.1	Cooperative Scheduled Testing - Loss	\$0.08			5		
9.20.9.2	Cooperative Scheduled Testing - C Message Noise	\$0.08			5		
9.20.9.3	Cooperative Scheduled Testing - Balance	\$0.34			5		
9.20.9.4	Cooperative Scheduled Testing - Gain Slope	\$0.08			5		
9.20.9.5	Cooperative Scheduled Testing - C Notched Noise	\$0.08			5		
9.20.10	Manual Scheduled Testing						
9.20.10.1	Manual Scheduled Testing - Loss	\$0.17			5		
9.20.10.2	Manual Scheduled Testing -C- Message Noise	\$0.17			5		
9.20.10.3	Manual Scheduled Testing - Balance	\$0.68			5		
9.20.10.4	Manual Scheduled Testing - Gain Slope	\$0.17			5		
9.20.10.5	Manual Scheduled Testing - C Notched Noise	\$0.17			5		
9.20.11	Additional Dispatch			\$123.51			5
9.20.12	Date Change			\$48.14			5
9.20.13	Design Change			\$105.34			5
9.20.14	Expedite Charge			ICB			3
9.20.15	Cancellation Charge			ICB			3
9.21	Channel Regeneration						
9.21.1	DS1	\$0.00		\$0.00	7		7
9.21.2	DS3	\$0.00		\$0.00	7		7
9.22	Intentionally Left Blank						
9.23	UNE Combinations - Intentionally Left Blank						
10.0	Ancillary Services - Intentionally Left Blank						
12.0	Operational Support Systems						
12.1	Development and Enhancements, per Order			No Charge At This Time			11
12.2	Ongoing Maintenance, per Order			No Charge At This Time			11
12.3	Daily Usage Record File, per Record	\$0.000441			5		
12.4	Trouble Isolation Charge			See 9.20			



**Exhibit A  
South Dakota\***

	Recurring	Recurring per Mile	Nonrecurring	REC	REC per Mile	NRC
<b>17.0 Bona Fide Request Process</b>						
17.1 Processing Fee			\$2,448.77			5

**NOTES:**

Unless otherwise indicated, all rates are pursuant to South Dakota Public Utilities Commission dockets:

A: Qwest and AT&T Arbitration in Docket No. TC96-184, effective March 4, 1999

# Voluntary Rate Reduction, Docket TC01-165, effective 12/12/02. Reductions reflected in the 12/12/02 Exhibit A.

- [1] Rates not addressed in the Cost Docket (estimated TELRIC)
- [2] Market-based rates
- [3] ICB, Individual Case Basis pricing.
- [4] Rates per FCC Guidelines.
- [5] Rates addressed in Cost Docket filed on October 15, 2002.
- [6] The preliminary QPF costs are included in the space construction charges. These engineering and planning charges are also included in the caged and cageless quote preparation fees. Upon completion of the collocation construction, the quote preparation fee (QPF) will be credited to the final space construction charge for the collocation job. The credit will apply to whichever QPF is applied. This exhibit currently lists multiple QPFs based on what has been proposed in the cost docket and what was approved in the AT&T interconnection agreement. CLEC may choose either QPF at this time.
- [7] Effective 8/1/03, Qwest will no longer charge the Recurring and Nonrecurring Charges for Channel Regeneration. Qwest reserves the right to revert back to the contractual rate only after appropriated notice is given.
- [8] The Cable Unloading/Bridge Tap Removal charge of \$58.50 approved in Docket No.TC96-184 does not apply until further notice.
- [9] All technically feasible Vertical Switch Features are available with compatible unbundled switch ports. No monthly recurring charge applies for Basic Vertical Switch Features. Only Basic Vertical Features with non-recurring charges are listed. Non-recurring charges are applicable whenever a feature is added - whether on new installation, conversion, or change order activity. Vertical Features not listed are included in the switch port and have a rate of zero for both recurring and nonrecurring charges.
- [10] A special request is a request by the customer to perform something that is technically feasible but the process and pricing are not yet in place.
- [11] Qwest will not charge for this element until the Commission has an opportunity to review and approve a rate in a cost proceeding.
- [12] Initially, Qwest will bill the grandfathered recurring rates for new Shared Loops. Qwest will begin billing the post TRO prices only after CLECs have been provided a forty-five (45) day notice. Rates will be applied prospectively.
- [13] Post TRO Shared Loop Rates were developed using the 2-Wire Nonloaded Loop rate, Zone 1 (\$15.20) as the basis rate. 10/2/03 - 10/1/04 was developed using 25% of basis rate; 10/2/04 - 10/1/05 was developed using 50% of basis rate; 10/2/05 - 10/1/06 was developed using 75% of basis rate. New Shared Loop Arrangements will no longer be available as of 10/2/04. No later than 10/2/06, CLEC must convert all Shared Loop arrangements to a Line Splitting arrangement, to a stand-alone Unbundled Loop, or such other arrangement as CLEC may have negotiated with Qwest to replace such Shared Loop arrangement.

**PETITION OF DIECA COMMUNICATIONS, INC., D/B/A COVAD  
COMMUNICATIONS COMPANY FOR ARBITRATION**

**EXHIBIT B**

***Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Local  
Circuit Switching for the Enterprise Market, Pennsylvania Public Utility Commission Docket  
No. I-00030100, Reconsideration Order (May 27, 2004)***

**PENNSYLVANIA**  
**PUBLIC UTILITY COMMISSION**

**Article I. Harrisburg PA 17105-3265**

Public Meeting held May 27, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman  
Robert K. Bloom, Vice Chairman  
Glen R. Thomas  
Kim Pizzingrilli  
Wendell F. Holland

Investigation into the Obligations of  
Incumbent Local Exchange Carriers to  
Unbundle Local Circuit Switching for  
the Enterprise Market

Docket No. I-00030100

*Section 1.01*

*Section 1.02 RECONSIDERATION ORDER*

**BY THE COMMISSION:**

Before the Commission is Verizon Pennsylvania Inc.'s (Verizon's) Petition for Reconsideration of that section of our December 18, 2003 Order (*December Order*) that addresses the continuing obligations of Verizon to provide competitors with access to its local circuit switching. In that Order, we found on the record before us no compelling justification to petition the Federal Communications Commission (FCC) for a waiver of its "no impairment" finding for local switching in the enterprise market. Verizon takes no issue with this finding. We further stated, however, that pursuant to our *Global Order* and 47 U.S.C. § 271(c)(2)(B)(vi) Verizon has a continuing obligation to provide requesting carriers with access to its local circuit switching at the rates contained in Verizon's Tariff 216. It is this continuing obligation section of the *December Order* to which Verizon's petition is directed. We will grant-in-part and deny-in-part the petition.

## **Factual and Procedural Background**

In 1996, Congress adopted a national policy of promoting local telephone competition through the enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *amending* the Communications Act of 1934, *codified at* 47 U.S.C. §§151, *et seq.* (Act). The Act relies upon the dual regulatory efforts of the FCC and its counterpart in each of the states, including the Commission, to foster competition in local telecommunications markets. *See generally Verizon Communications Inc. v. Trinko*, 124 S. Ct. 872, 881-883 (2004) (discussing regulatory structure of the Act). The goals of the Act are accomplished in part through the imposition of particular access obligations upon incumbent local exchange carriers, like Verizon, and Regional Bell Operating Companies (BOCs), also including Verizon. Relevant access obligations are set forth in 47 U.S.C. §§ 251(c)(3) and 271(c)(2)(B)(vi), respectively. Additional relevant obligations may also be imposed by state law on a state-specific basis. 47 U.S.C. § 251(d)(3) (preserving state access regulations).

In 1999, in order to promote competition in local markets, we ordered Verizon to provide the Unbundled Network Element Platform (UNE-P) to competitors for service to business customers with total billed revenue from local services and intraLATA toll services at or below \$80,000 annually. *Global Order*<sup>1</sup> at 85-92. UNE-P was defined to be “a combination of all network elements required to provide local service to an end user. It contains, at a minimum, the loop, switch port, switch usage, and transport elements.” *Id.* at 85. The obligation to provide UNE-P was imposed through December 31, 2003, after which time Verizon was invited to demonstrate to the Commission that the obligation should no longer be imposed. *Id.* at 90. Our *December Order* at 14 observed the continuation of the *Global Order* obligation. Concurrently, the *December*

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<sup>1</sup> *Joint Petition of Nextlink et al.*, Opinion and Order (entered Sep. 30, 1999), Docket Nos. P-00991648 and P-00991649 (*Global Order*)

*Order* at 16 cautioned Verizon's competitors against assuming that this state law obligation would continue indefinitely.

In 2001, the FCC granted Verizon's request for authorization to provide in-region, interLATA services in Pennsylvania. *Pennsylvania 271 Order*.<sup>2</sup> Authorization was granted as in the public interest because, in part, this Commission had put into place and was actively providing oversight of Verizon's performance assurance plan (PAP), which provided the FCC with assurance the local market would remain open. *Pennsylvania 271 Order* at 127. The PAP measures, among other things, aspects of Verizon's UNE-P performance.

In 2003, the FCC issued an order relieving Verizon of its obligation under 47 U.S.C. § 251(c) to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops, except where a state commission petitions the FCC for waiver and waiver is granted. *Triennial Review Order* (or *TRO*)<sup>3</sup> at ¶¶ 451-458; 47 C.F.R. § 51.319(d)(3). Absent switching, there is no UNE-P by definition. After review of the record in this proceeding, we decided not to petition the FCC for waiver. *December Order*. Since § 251(c) does not presently impose upon Verizon an obligation to provide carriers with access to local circuit switching for service to end-user customers using DS1 capacity and above loops, the availability of UNE-P under § 251(c) for service to such customers has been eliminated.

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<sup>2</sup> *In the Matter of Application of Verizon Pennsylvania Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419, FCC 01-269, CC Docket No. 01-138, Order (rel. Sep. 19, 2001).

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, FCC 03-36, as corrected by FCC 03-227, CC Docket No. 01-338, Report and Order (rel. Aug. 21, 2003).

The FCC's *Triennial Review Order* was challenged by various petitioners, including this Commission, in the United States Court of Appeals for the District of Columbia. The case was argued January 28, 2004. On March 2, 2004, the court decided, among other things, that the Commission's challenge to the preemptive scope of the *TRO* was not ripe because the FCC "has not taken any view on any attempted state unbundling order." *U.S.T.A. v. F.C.C.*, 359 F.3d 554, 594 (D.C. Cir. 2004). The court also denied petitions for review of the FCC's determination regarding the unbundling of enterprise switches. *Id.* at 586-587. Regarding § 271, the court decided that there was "nothing unreasonable in the [FCC's] decision to confine TELRIC pricing to instances where it has found impairment [under § 251]." *Id.* at 589. The court also decided that the FCC was not unreasonable in deciding that any duty to combine network elements under § 251 does not apply to § 271 unbundling obligations. *Id.* The court distinguished its holding, however, from the separate question of whether the FCC's decision not to require combinations under § 271 satisfies the general nondiscrimination requirement of § 202. *Id.* at 590.

Our *December Order* distinguishes Verizon's distinct access obligations stemming from the *Global Order* (an exercise of our independent state law authority), the *Pennsylvania 271 Order* (memorializing federal requirements imposed on Verizon as a condition of entry into the long distance market pursuant to 47 U.S.C. § 271), and the *Triennial Review Order* (establishing minimum federal requirements pursuant to 47 U.S.C. § 251(c)). We recognized the FCC had relieved Verizon of the relevant obligation under § 251, but correspondingly recognized the continuation of the relevant access obligations under state law and, to an extent, under § 271.

On January 2, 2004, Verizon filed a Petition for Reconsideration of our *December Order*. Verizon challenges the lawfulness of that section of the *December Order* which recognized Verizon's continuing obligation to provide access to UNE-P under state law. Verizon also seeks clarification of our position on the rate at which carriers can obtain

access to local switching under § 271. On January 21, 2004, we granted the petition pending consideration on the merits.

An answer to the petition was filed by the Pennsylvania Carrier's Coalition (PCC).<sup>4</sup> A joint answer was filed by ARC Networks, Inc. d/b/a InfoHighway Communications Corp. and Metropolitan Telecommunications Corporation of PA (collectively ARC). A third answer was filed by MCI WorldCom Network Services, Inc. (MCI).

Verizon moved to strike MCI's answer. MCI answered Verizon's Motion to Strike.

Further, on April 16, 2004, before the FCC, Verizon filed an Emergency Request for Declaratory Ruling and Preemption. Verizon's filing urges the FCC to issue a declaratory ruling that the *December Order*—to the extent that it requires Verizon to continue to provide unbundled access to its local switching serving the enterprise market at TELRIC prices—is inconsistent with, and therefore preempted by, federal law. *In the Matter of Verizon Pennsylvania Inc. Petition for Declaratory Ruling and Order Preempting the Pennsylvania Public Utility Commission's Order Directing Verizon Pennsylvania Inc. To Provide Unbundled Access to Its Enterprise Switches*, File No. \_\_\_\_\_, Emergency Request for Declaratory Ruling and Preemption (filed April 16, 2004).

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<sup>4</sup> The PCC is an informal group of competitive local exchange carriers comprised of Full Service Computing Corp. t/a Full Service Network ; ATX Licensing, Inc.; Remi Retail Communications, LLC; and Line Systems, Inc.

## **Position of the Parties**

Verizon's position is that the *December Order*:

appears to suggest (1) that Verizon PA has a separate and continuing additional unbundling obligation under the Commission's *Global Order* to provide unbundled switching and UNE-P to enterprise customers—a conclusion directly at odds with the 1996 Act, binding case law, and the FCC's express conclusions; and (2) that the TELRIC rates that apply to network elements unbundled pursuant to section 251 of the 1996 Act must also be applied to network elements unbundled pursuant only to section 271—an assumption expressly and unambiguously rejected by the FCC, which has controlling authority over this question.

Petition at 1. “Simply put, a state conclusion that ‘yes, an ILEC is required to unbundle’ actually and directly conflicts with the federal conclusion that ‘no, the ILEC does not have to unbundle.’” *Id.* at 9. Thus, Verizon argues that the Commission's reading of the *Global Order* as imposing a continuing obligation to provide access to local switching directly conflicts with the FCC's national finding of non-impairment for enterprise switching, a finding made pursuant to § 251(d)(2). *Id.* Further, Verizon argues that any continuing access obligation imposed by § 271 does not require TELRIC pricing, rather Verizon is permitted to price access at a “market-based” rate. *Id.* at 12-13.

In support, Verizon cites a variety of authorities and theories. Verizon's petition cites: 47 U.S.C. § 251(d)(2) (requiring FCC to determine which network elements should be made available for purposes of § 251(c)(3)); 47 U.S.C. § 252(c)(1) (requiring state commissions to resolve arbitration disputes consistent with regulations prescribed by the FCC pursuant to § 251); *USTA v. FCC*, 290 F.3d 415, 417-18 (D.C. Cir. 2002) (opining that § 251 requires Verizon to unbundle its network elements on terms prescribed by the FCC); *TRO* ¶ 186 (stating that the FCC has responsibility for establishing a framework to implement the unbundling requirements of § 251(d)(2)); *AT&T v. Iowa Utils. Bd.*, 525



U.S. 366, 371, 378 n. 6, 387 n. 10 (1999) (for the assertion that state-specific unbundling requirements that do not mirror FCC requirements impede competition and are prohibited by the Act); *TRO* ¶¶ 187, 192, 195 (requiring state commissions to amend and alter state-specific decisions to conform to the FCC’s unbundling rules); Brief for Respondents at 92-93, *U.S.T.A. v. F.C.C.*, No. 00-1012 (D.C. Cir., filed Dec. 13, 2003) (explaining FCC view that a FCC decision not to require an ILEC to unbundled a particular element reflects a “balance” struck by the agency and that any state rule that struck a different balance would conflict with federal law, thereby warranting preemption); and, *TRO* ¶ 72 (stating that FCC must interpret the Act’s “impair” standard as requiring the FCC to determine the elements that “should or should not be unbundled”).

Verizon also cites *TRO* ¶ 655, n. 1990 (declining to require BOCs, pursuant to § 271, to combine network elements that no longer are required to be unbundled under § 251); *TRO* ¶ 659 (concluding that § 271 requires BOCs to provide unbundled access to elements not required to be unbundled under § 251, “but does not require TELRIC pricing”); *TRO* ¶¶ 663 (discussing pricing of unbundled access pursuant to § 271 and deciding that the pricing methodology applicable to elements accessed pursuant to § 271 is the “basic just, reasonable, and nondiscriminatory rate standard of [47 U.S.C. §§ 201, 202] that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate service) the Communications Act.”); *TRO* ¶¶ 659, 662-64 (further discussing pricing and enforcement); *Proceeding by the Dep’t of Telecoms. And Energy on its own Motion to Implement the Requirements of the F.C.C.’s Triennial Review Order Regarding Switching for Large Business Customers Served by High-Capacity Loops*, D.T.E. 03-59, Order (issued Nov. 25, 2003) at 19 (holding that market prices that are subject to the disciplining effects of competitive forces are presumptively just and reasonable and that Verizon’s pricing under § 271 would be subject to competitive forces).

PCC’s position is that the *December Order* is consistent with federal law and that Verizon’s Petition “fails miserably under the Commission’s long-established standards

for reconsideration.” PCC Answer at 2. “The bottom line is that this Commission is free and should continue its current policies originally established in the *Global Order* until a party, including Verizon, convinces this Commission that the policies should be changed.” *Id.* at 4. Further, PCC argues that the FCC has not exercised exclusive jurisdiction over Verizon’s § 271 obligations and notes Verizon’s agreement to unbundle its network as a condition of providing in-region, interLATA service. *Id.* at 12, 20.

ARC’s position, like PCC’s, is that the Commission “clearly has the authority to take the actions it took in the [*December Order*], and the conclusions the Commission reached in the [*December Order*] are fully consistent with the 1996 Act.” ARC Answer at 3. “Section 251(d)(3) does not preclude states from modifying the federal unbundling regime, as Verizon suggests, but rather, it bars only measures that require incumbents to violate the Act or preclude competitors from using elements to provide competing services.” *Id.* at 5. “[T]he Act does not demand that state rules mirror exactly the FCC’s regulations. Section 251(d)(3) of the Act clearly contemplates that the states will co-administer Section 251’s market-opening mechanisms.” *Id.* at 6. Regarding § 271 pricing, ARC notes that the *December Order* does not require TELRIC pricing, rather, the Commission held that Tariff No. 216 rates satisfy the “just and reasonable” pricing standard for § 271 elements, especially given the fact that the FCC has determined in the course of Verizon’s § 271 proceeding that the Tariff No. 216 rates are just and reasonable. *Id.* at 8-9.

MCI’s position on the merits of the *December Order* is substantially the same as the positions taken by PCC and ARC. The distinguishing feature of MCI’s Answer<sup>5</sup> is

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<sup>5</sup> Verizon moves to strike MCI’s Answer on the ground that MCI was not one of the petitioners in this case and has never filed a Petition to Intervene in this proceeding. Alternatively, Verizon argues that Verizon had consented to an extension of time for “parties” to answer the petition. Given that MCI is not a “party,” and therefore not subject to the extension, Verizon argues the MCI Answer should be stricken as untimely. Verizon Motion at 2. MCI responds that it is true that MCI did not formally intervene, but that is because MCI did not intend to present evidence on issues specifically dealing with the enterprise market. When Verizon’s Petition brought other issues into the case, MCI argues its rights became

that MCI did not participate in the development of the factual record in this CLEC-initiated investigation, but now argues that this proceeding is not the place for Verizon to challenge the Commission's *Global Order* decision because many CLECs interested in the preservation of the *Global Order* requirements are not on this Docket's service list. MCI Answer at 1-2. MCI argues that Verizon's Petition broadens the scope of this proceeding by challenging the viability of the *Global Order* requirements generally. MCI accepts that Verizon has a procedural right to make such a challenge, but argues that "[i]f Verizon disagrees that the *Global Order* creates a continuing obligation, it should petition the Commission separately, but should not use this proceeding to make such a monumental change in the current legal landscape in Pennsylvania." *Id.* at 3.

In opposition to Verizon's Petition, opponents' citations include *TRO* ¶¶ 191-93, 653, 662, 665; the FCC's *USTA* Brief at 90-91; 47 U.S.C. §§ 152(b), 251(d)(3), 252(e)(3), 253(b), 254(i), 261(b)&(c), 153(41), 601(c), and 706(c); *Verizon Communications Inc. v. Trinko*, *supra*; *Application of Verizon Pa. Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pa.*, *supra*.<sup>6</sup>

### **Analysis**

#### **Whether the Commission Will Consider the Merits of Verizon's Petition**

The Commission will only address reconsideration requests that raise new and novel arguments, not previously heard, or considerations that appear to have been overlooked or not addressed by the Commission. *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982). Thus, reconsideration petitions that raise the same questions as raised previously are improper.

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directly affected, and therefore, it is entitled to respond to the petition. MCI Answer to Verizon Motion at 1-2.

<sup>6</sup> Due to our disposition of the Petition, we do not add parentheticals to these citations.

In this case, we will consider the merits of Verizon's Petition in order to address the guidance and clarifications of the Act and *Triennial Review Order* provided by the federal courts and the FCC since issuance of our *December Order*.

### **Whether the Commission Will Consider the Merits of MCI's Answer**

The section of the *December Order* that is challenged by Verizon's Petition for Reconsideration merely reminded Verizon and the CLECs of the continuing obligations of the *Global Order*, absent further proceedings. Preemption arguments made by the parties in this proceeding had prompted our decision to be clear on the point of whether we viewed the *Global Order* requirements as remaining intact. We specifically stated: "Given the lack of record development and the uncertainty as to an actual conflict, as well as our open and unanswered invitation to [Verizon] to demonstrate that the *Global Order* requirement can be retired, we will not change the *status quo* vis-à-vis access at this time." *December Order* at 15. Similarly, we left the Tariff No. 216 pricing in place. *Id.* at 16.

We continue to believe it was beneficial to the competitive markets to be clear on the status of the *Global Order*. We also note recent support for our position. The D.C. Circuit has decided that the concern we expressed in December about the preemptive effect of the *Triennial Review Order* was premature. *U.S.T.A. v. F.C.C.*, 359 F.3d at 594. Further, the FCC recently observed that uncertainty can be harmful to telephone consumers. Letter of FCC Commissioners to Verizon President & CEO Ivan Seidenberg, dated March 31, 2004, available at [http://www.fcc.gov/commissioners/letters/triennial\\_review/verizon.pdf](http://www.fcc.gov/commissioners/letters/triennial_review/verizon.pdf) (stating "telephone consumers are served best by ending this uncertainty and getting back to

business”). These actions favor our decision to maintain the status quo pending formal proceedings.

Formal proceedings initiated to address the issue of whether we should amend the *Global Order* would provide all interested parties with notice and an opportunity to be heard as well as assure development of an adequate record. See 66 Pa.C.S. §§ 501(a), 703(g). Because of this, we will simply apply 52 Pa. Code § 1.2(c), which permits a liberal construction of our formal proceeding rules when necessary and appropriate, to allow consideration of MCI’s Answer. Therefore, Verizon’s Motion to Strike MCI’s Answer to Verizon’s Petition for Reconsideration will be denied.

### **Consideration of the Merits of Verizon’s Petition for Reconsideration**

We grant the petition in part to clarify our position on the pricing of network elements unbundled pursuant to § 271. Contrary to Verizon’s suggested interpretation, the *December Order* does not mandate that TELRIC pricing be used to price such network elements. Rather, as observed by ARC, the order merely provides that existing Tariff No. 216 rates be used at present because they are currently in effect and fall within the range of a just and reasonable price. Verizon remains free to exercise all of its rights to propose the establishment of new just and reasonable prices applicable to § 271 network elements.

Since the *Triennial Review Order* did not fully flesh out all the processes, procedures and requirements associated with Verizon’s § 271 access obligations, we recognize that it remains unclear as to where and how Verizon’s “just and reasonable” rate for access in a particular state (since § 271 is granted on a state-by-state basis) is established and/or disclosed to the requesting carrier. Our review of the *TRO*, the D.C. Circuit’s opinion, and even the FCC’s brief in the *USTA* litigation, has not provided any clarity on this point. However, given that the Tariff No. 216 is filed with the

Commission, the Commission's existing procedures for tariff changes, namely 66 Pa. C.S. §§ 1301 and 1308, are available to be used if Verizon seeks to establish new non-TELRIC rates for enterprise switching. Meanwhile, the uncertainty again supports our observation that the Tariff No. 216 rates are currently in effect and should be used until a new rate is properly established.<sup>7</sup>

We deny the remaining portion of the petition. We are not persuaded that maintaining the status quo vis-à-vis the *Global Order* requirements is improper. We continue to believe that absent further proceedings, which Verizon is free to initiate, Verizon has a separate and continuing additional unbundling obligation under the *Global Order* to provide unbundled switching and UNE-P to enterprise customers. Support for our view is found in multiple sources, specifically including 47 U.S.C. § 251(d)(3) (preserving state access requirements); and, *U.S.T.A. v. F.C.C.*, 359 F.3d at 594 (holding that our challenge to the preemptive scope of the *TRO* is not ripe because the general prediction voiced in *TRO* ¶ 195 does not constitute final agency action). In particular, the *Global Order* provides that the availability of UNE-P for enterprise customers would not be indefinite and that Verizon may request its termination after December 31, 2003. Verizon has yet to avail itself of this opportunity.

Furthermore, even if the *Global Order* requirements are deemed to be preempted (and no court has so determined), there is support for finding a continuing access obligation in § 271's requirement that Verizon provide access to its local switching. Presently, no FCC decision has relieved Verizon from its ongoing § 271 obligations in Pennsylvania, or fully defined what those obligations are in the wake of the *Triennial*

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<sup>7</sup> The Commission has tariffs on file that allow Verizon pricing flexibility. See, e.g., Verizon Pennsylvania Inc. Informational Tariff for Competitive Services, Pa. P.U.C. No. 500, Section 2, 1<sup>st</sup> Revised Sheet 13 at ¶ 29 (providing that the rates for Centrex Service packages "will be determined by the Telephone Company...[and] will range from a floor represented by the costs of furnishing service to a ceiling represented by the rates set forth in Sections 2 and 2A of this Informational Tariff.").

*Review Order.*<sup>8</sup> We conclude that there is no firm basis for this Commission to unilaterally sanction removal of a § 271 element from Verizon's offerings in Pennsylvania under the present state of FCC orders. If Verizon believes that its § 271 obligations in Pennsylvania have changed, it should put that issue to the FCC. Upon FCC approval of Verizon's position, modifications of relevant offerings would then be appropriate.

We also note that Verizon may not have to offer such switching in combination under § 271 by virtue of § 251, but it has not been decided whether Verizon must combine the switching with other elements under another legal theory. See *U.S.T.A. v. F.C.C.*, 359 F.3d at 590; *Verizon v. Trinko*, 124 S. Ct. at 882-83 (holding that Verizon may subject itself to state commission oversight under a performance assurance plan).<sup>9</sup> We do not imply a viewpoint on the merits of alternative legal theories, rather, we make these observations to explain why we maintain the status quo in the absence of a fully developed record on the issues raised in Verizon's instant Petition for Reconsideration.

Our action in this regard is without prejudice to Verizon's right to seek further administrative relief, and we invite Verizon to initiate appropriate formal proceedings to address the preemption and pricing issues raised in its Petition for Reconsideration;  
**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of our Order entered December 18, 2003, filed by Verizon Pennsylvania Inc. on January 2, 2004, and granted pending review

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<sup>8</sup> On October 24, 2003, the Verizon telephone companies filed a petition asking the FCC to forebear from § 271 obligations. See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; CC Docket No. 01-338. The matter is pending.

<sup>9</sup> The Pennsylvania Performance Assurance Plan measures aspects of Verizon's UNE-P performance.

and consideration of the merits by Order entered January 21, 2004, is hereby granted-in-part and denied-in-part consistent with the discussion contained in the body of this Order.

2. That Verizon's Motion to Strike the Answer of MCI to Verizon's Petition for Reconsideration is denied.

3. That this record shall be marked closed.

BY THE COMMISSION

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: May 27, 2004

ORDER ENTERED: May 28, 2004



SOUTH DAKOTA DRAFT – 3-24-05

AGREEMENT FOR  
TERMS AND CONDITIONS FOR INTERCONNECTION, UNBUNDLED NETWORK  
ELEMENTS, ANCILLARY SERVICES, AND RESALE OF TELECOMMUNICATIONS  
SERVICES PROVIDED BY

QWEST CORPORATION

FOR

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY

IN THE STATE OF SOUTH DAKOTA

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## Section 1.0 - GENERAL TERMS

1.1 This Agreement for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is between Qwest Corporation ("Qwest"), a Colorado corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("CLEC"), a Virginia corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

1.2 Intentionally Left Blank.

1.3 This Agreement sets forth the terms, conditions and pricing under which Qwest will provide to CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which Qwest is providing local Exchange Service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of South Dakota, for purposes of providing local Telecommunications Services.

1.4 Intentionally Left Blank.

1.5 Intentionally Left Blank.

1.6 Intentionally Left Blank.

1.7 Once this Agreement is approved, any amendment to the Agreement by the Parties will be accomplished through Section 252 of the Act. This Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in the SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the Change Management Process (CMP). CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and Billing processes. In addition, the Parties shall amend this Agreement under one (1) of the following two (2) options unless the Commission orders otherwise.

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms

and conditions than defined by Qwest for such new product, and CLEC wishes to purchase such new product prior to execution of an Amendment with different terms and conditions, CLEC agrees to abide by the terms and conditions defined by Qwest for such new product on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 CLEC may opt into, through Section 252(i) of the Act, any provision of the SGAT or an existing Agreement by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, contained in an existing Interconnection Agreement or SGAT, Qwest may require CLEC to accept Legitimately Related provisions to ensure that the opted into provision retains the context set forth in the Interconnection Agreement or this Agreement. The expiration date of the Interconnection Agreement from which the opted into provision was selected or the expiration date specified in the SGAT respectively, whichever is closer to the present date, shall be considered Legitimately Related. In all other instances, Qwest bears the burden of establishing that an Interconnection Agreement or SGAT provision is Legitimately Related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are Legitimately Related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are Legitimately Related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not Legitimately Related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical, or other considerations. In extraordinary circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.2.1 Nothing in this Agreement shall preclude CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such provision or agreement itself resulted from an opting in by CLEC that is a party to it.

1.8.3 If Qwest has identified additional provisions that Qwest believes are Legitimately Related and has specified provisions in the proposed amendment to which those provisions are not Legitimately Related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are Legitimately Related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) Days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, 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 metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorneys' fees and costs in prosecuting/defending the action. However, if either Party is found by the Commission to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorneys' fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Commission



## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successor) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of Telecommunications industry administrative or technical standards.

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as of October 3, 2003 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60)

Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be resolved by the arbitrator(s) during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

2.2.1 In addition to, but not in limitation of, 2.2 above, nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the FCC's decision and rules adopted in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, nor rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same (Decision(s)). Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decision should be changed, vacated, dismissed, stayed or modified.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between this Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates terms and conditions of this Agreement shall prevail.

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### Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. The Parties shall complete Qwest's "New Customer Questionnaire," as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New Customer Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request – LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire. This questionnaire will be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain Billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

3.2.2 CLECs that have previously completed a Questionnaire need not fill out a new New Customer Questionnaire; however, CLEC will update its New Customer Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this Agreement, which may include an amendment pursuant to Section 1.7.1.

3.3 Intentionally Left Blank.

3.4 Intentionally Left Blank.

## Section 4.0 - DEFINITIONS

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a Switch used to connect End Office Switches to interexchange Carrier Switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline Telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video Telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

"Applicable Law" means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and Interconnection for Telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in Switch technology that initially records telecommunication message information. AMA format is contained in the AMA

document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification" or "ALI" is the automatic display at the Public Safety Answering Point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Number Identification" or "ANI" is the Billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit Switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to End User Customers which provides the End User Customer with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such End User Customer to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a Billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

"Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User Customer and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Carrier Liaison Committee" or "CLC" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a Switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate End User Customer station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC Switch(es) shall be considered Tandem Office Switch(es) to the extent such Switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch. A fact-based consideration by the Commission of geography should be used to classify any Switch on a prospective basis.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record Billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Centrex" shall have the meaning set forth in Section 6.2.2.9.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the Billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an

Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the State Regulatory Commission or Board with jurisdiction for the services provided pursuant to this Agreement. In the State of South Dakota, "Commission" means the South Dakota Public Utilities Commission.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Cross Connection" is a cabling scheme between cabling runs subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, Customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).



"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data" means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Data Local Exchange Carrier" or "DLEC" is a CLEC interconnecting primarily for purposes of transporting data.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between Qwest Wire Centers, Qwest End Office Switches, and Qwest Tandem Switches to which CLEC is granted exclusive use. The path may operate at DS-1 or DS-3 transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated Cross Connection of Digital Signal Level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with Cross Connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated Cross Connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a

manual Cross Connection. Interconnection is between a DSX or LGX to a Switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay, or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the loop and optimize the line rate for a given line quality.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission

technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Section 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Lists" shall have the meaning set forth in Section 10.6.1.1.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 5.2.1.

"Electronic Bonding" is a real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail Customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two (2) or more Carriers.

"Enhanced Services" means any service offered over Common Carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve End User Customer interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Section 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access" (IntraLATA Toll) as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the Agreement shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the Local Calling Area as determined by the Commission.

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually-agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail Customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the Provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

"Individual Case Basis" or "ICB" shall have the meaning set forth in Exhibit I.

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"Integrated Digital Loop Carrier" means a subscriber Loop Carrier system, which integrates multiple voice channels within the Switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When CLEC signs and delivers a copy of this Agreement to Qwest pursuant to the notice provision of the Agreement, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(e) of the Act.

"Interexchange Carrier" or "IXC" means a Carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately Related" terms and conditions are those rates, terms, and conditions that relate solely to the individual Interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other Interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular Interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" or "LEC" means any Carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a Carrier insofar as such Carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXC's to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP" shall have the meaning set forth in Section 10.2.1.1.

"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and Billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

- aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

- disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

- aggregates a specified number of signals or channels to fewer channels (concentrating);

- performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

- in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying Carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the technician performs work on a business Day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply when the technician performs work on either a Sunday or Qwest recognized holiday. These charges may be assessed by either Qwest or CLEC in accordance with 12.3.4.4.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one Carrier's responsibility for service begins and the other Carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" means an Interconnection between two (2) networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the Billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the Carrier in the call routing process immediately preceding the terminating Carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an



automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for Maintenance and Repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element (including all of its features, functions and capabilities) that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Section 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"Non-Qualifying Service" is a service that is not a Qualifying Service.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the basic numbering plan for the Telecommunications networks located in the United States as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two (2) general categories of NPA. "Geographic NPA" is associated with a defined geographic area,

and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit Switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and Billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the Billing number of the calling party.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility Provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where Technically Feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User Customers, its Affiliates or to any other party.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and IntraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two (2) LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Line Side Port is typically associated with one or more telephone numbers that serve as the Customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density (PSD) Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop Concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.qwest.com/wholesale/pcat/>

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7, including out of hours coordination.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider.

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Qualifying Service" is a Telecommunications Service that competes with a Telecommunications Service that has been traditionally the exclusive or primary domain of incumbent LECs, including, but not limited to, Local Exchange Service, such as plain old telephone service (POTS), and Access Services, such as Digital Subscriber Line services and high-capacity circuits. Services used solely as an input for CLEC to provide retail interexchange or information services are not Qualifying Services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center, and 2) the corresponding geographic area which is associated with one or more particular NPA-NNX codes which have been assigned to a LEC or its provision of Telephone Exchange Service.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes, but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the Central Office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for Provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Premises" means all Qwest Premises, other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User Customer and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital Loop Carriers, fiber hubs, DSLAMs, etc.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part (MTP), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part (SCCP), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part (ISUP), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part (TCAP), which provides for transfer of non-circuit related information between signaling points.

"Signaling Transfer Point" or "STP" means a Packet Switch that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common channel Signaling (CCS) messages.

"Special Request Process" or "SRP" shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two (2) copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate

satisfactorily in the presence of cross talk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all Loop lengths, model Loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the Loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or "SATE" shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association (ECSA) for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Technically Feasible." Interconnection, access to unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that

such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary Transaction Sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trouble Reports" means trouble reports received via MEDIACC, CEMR, or reported to one of Qwest's call or repair centers, and managed and tracked within Qwest's repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

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"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, for which unbundled access is required under section 271 of the Act or applicable state law, or for which unbundled access is provided under this Agreement.

**Deleted:** Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

"Unbundled Network Element Platform" or "UNE-P" is a combination of Unbundled Network Elements as set forth in Section 9.23.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network as required by the FCC, the Commission or this Agreement.

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

DRAFT – 3-24-05



## Section 5.0 - TERMS AND CONDITIONS

### 5.1 General Provisions

5.1.1 Intentionally Left Blank.

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Carriers or to either Party's End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.

5.1.3.1 If such impairment is material and poses an immediate threat to the safety of either Party's employees, Customers or the public or poses an immediate threat of a service interruption, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other Party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates the provision or refuse to provide the same type of service if it reasonably appears that the particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstated as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other Party shall provide written notice within five (5) calendar Days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar Days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar Days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its End User Customers and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and order of the Federal Communications Commission and orders of the Commission.

## 5.2 Term of Agreement

5.2.1 This Agreement shall become effective on the date of Commission Approval. This Agreement shall be binding upon the Parties for a term of three (3) years and shall expire on [to be filled in by CD&S].

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in full force and effect until superseded by a successor agreement in accordance with this Section 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the term, or the Agreement shall renew on a month to month basis. The date of this notice will be the starting point for the negotiation window under section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.

5.2.2.1 Prior to the conclusion of the term specified above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing SGAT or agreement to become effective at the conclusion of the term or prior to the conclusion of the term if CLEC so chooses.

## 5.3 Proof of Authorization

5.3.1 Each Party shall be responsible for obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

5.3.2 The Parties shall make POAs available to each other upon request in the event of an allegation of an unauthorized change in accordance with all Applicable Laws and rules and shall be subject to any penalties contained therein.

## 5.4 Payment

5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date). If the payment due date is not a business day, the payment shall be due the next business day.

5.4.1.1 Qwest may send bills to CLEC or CLEC may send bills to Qwest, containing amounts found to be unbilled or underbilled ("Backbill(s)"), as follows:

5.4.1.1.1 Except as provided in Section 5.4.1.1.5 below, for erroneous failure to bill or underbilling of any charges incurred by the billed Party under this Agreement, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120) Days prior to the Backbill Date. For the purposes of this Section 5.4.1.1, charges shall be deemed incurred (i) for services charged on a usage-sensitive basis, upon the recording of such usage and (ii) for all other services, upon the first day of the Billing cycle in which the Billed Party used such service; or

5.4.1.1.2 For failure to bill or underbilling where data exchange with third party Carriers is required, the Billing Party may submit a Backbill to the billed Party limited to charges incurred by the billed Party within the one hundred twenty (120)Days prior to the Backbill Date; or

5.4.1.1.3 Where Qwest or CLEC is required by regulatory agencies, arbitrators, courts, or legislatures to implement new pricing structures, Qwest may submit to CLEC, or CLEC may submit to Qwest, up to one hundred twenty (120) Days after the later of the implementation date required in the regulatory action, the date of the final, non-appealable arbitration or order, or the effective date of the legislation or Tariff (each such date hereinafter referred to as a "Governmental Requirement Date"), a Backbill for charges incurred by CLEC, or incurred by Qwest, as a result of, and since the applicable Governmental Requirement Date; or

5.4.1.1.4 Qwest and CLEC will exert commercially reasonable efforts not to send Backbills from their Billing systems outside the time periods defined in Section 5.4.1.1.1 through 5.4.1.1.3, above. In any event, except as provided in Section 5.4.1.1.5 below, neither CLEC nor Qwest will be liable for charges contained in Backbills that are sent outside the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3.

5.4.1.1.5 The Billing Party may send Backbills outside of the time periods defined in Section 5.4.1.1.1 through Section 5.4.1.1.3, but otherwise subject to the limitations in this Agreement applicable to Billing disputes, for charges incurred by the billed Party where the failure to bill or underbilling is caused solely by the acts, failure or refusal to act, errors or omissions of the billed Party, and the billed Party shall be liable for such Backbilled charges. Where such

failure to bill or underbilling is caused in part by the billed Party and in part by the Billing Party, the Parties may agree upon other time periods for Backbilling.

5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance.

5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the nonrecurring charges or monthly Billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar Days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies. To the extent that either Party disputes any charges or monthly billing pursuant to this Section 5.4.4, the Party's withholding of such disputed charges pursuant to this Section 5.4.4 shall not constitute a default under Section 5.13 until such dispute is resolved. Nothing in this Section shall be construed to

restrict the Parties' right to recover amounts paid in excess of lawful charges, which shall be subject to the time limits set forth in Section 5.18.5.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the Billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the Billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the Billing Party, no further action is required.

5.4.4.2 If a Party pays the charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, and the dispute is resolved in favor of the disputing Party the Billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or applicable state statutes or Commission rules.

5.4.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to this Section 5.4 or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous nonpayment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly delinquent" means any payment of undisputed amounts received thirty (30) calendar Days or more after the payment due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1<sup>st</sup> three (3) months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) calendar Days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission regulations. Cash deposits and accrued interest will be credited to the billed Party's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with the Billing Party, which will generally be one full year of timely payments of undisputed amounts in full by the billed Party. Upon a material change in financial standing, the billed Party may request and the Billing Party

will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 The Billing Party may review the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 Each Party shall be responsible for notifying its End User Customers of any pending disconnection of a non-paid service by the billed Party, if necessary, to allow those Customers to make other arrangements for such non-paid services.

## 5.5 Taxes

5.5.1 Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the 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. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## 5.6 Insurance

5.6.1 Each 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 "Best's" rating of B+XIII with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an Affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

5.6.1.1 Workers' Compensation with statutory limits as required in the state of operation and Employers' Liability insurance with limits of not less than \$100,000 each accident.

5.6.1.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or completed operations and contractual liability with respect to the liability assumed by each Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit.

5.6.1.3 Business automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of \$10,000,000 excess of Commercial General Liability insurance specified above. These limits may be obtained through any combination of primary and excess or umbrella liability insurance so long as the total limit is \$11,000,000.

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the Premises or Remote Premises.

5.6.2 Each Party will initially provide certificate(s) of insurance evidencing coverage, and thereafter will provide such certificates upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) calendar Days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by the other Party; and (4) acknowledge severability of interest/cross liability coverage.

## **5.7 Force Majeure**

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other Persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence. The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

## **5.8 Limitation of Liability**

5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict

liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

5.8.3 Intentionally Left Blank.

5.8.4 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors, or employees.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 Intentionally Left Blank.

## 5.9 Indemnity

5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

5.9.1.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or Persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

5.9.1.2 In the case of claims or loss alleged or incurred by an End User Customer of either Party arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's End User Customers regardless of whether the underlying service was provided or Unbundled



Element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party. The obligation to indemnify with respect to claims of the Indemnifying Party's End User Customers shall not extend to any claims for physical bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.

5.9.1.3 Reserved for Future Use.

5.9.1.4 For purposes of Section 5.9.1.2, where the Parties have agreed to provision line sharing using a POTS Splitter: "End User Customer" means the DSL provider's End User Customer for claims relating to DSL and the voice service provider's End User Customer for claims relating to voice service.

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

5.9.2.2 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

5.9.2.3 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnifying Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

## 5.10 Intellectual Property

5.10.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to Telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned,

controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other Person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the Parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment, services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its Affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its Affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its Affiliates; 3) the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its Affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the Network Elements it uses to provide service to its End User Customers, provided it does not represent the Network Elements as originating from the other Party or its Affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than Qwest services resold by CLEC.

5.10.6.2 CLEC's use of the Authorized Phrase does not cause End User Customers to believe that CLEC is Qwest.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to Qwest for its prior written approval.

5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes End User Customer confusion, Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to the other of any right, title or interest in or to the trademarks or service marks of the other (the Marks) and that this Agreement does not confer

any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. Neither Party will do anything inconsistent with the other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of their respective Owners. The Parties shall comply with all Applicable Law governing Marks worldwide and neither Party will infringe the Marks of the other.

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

## 5.11 Warranties

5.11.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

## 5.12 Assignment

5.12.1 Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate Affiliate or an entity under its common control; without the consent of the other Party, provided that the performance of this Agreement by any such assignee is guaranteed by the assignor. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

5.12.2 In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through facilities or services provided by Qwest under this Agreement, the transferee shall be deemed a successor to Qwest's responsibilities hereunder for a period of ninety (90) Days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission's then

applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest shall use its best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Qwest's obligations pursuant to the terms of this Agreement.

5.12.3 Nothing in this section is intended to restrict CLEC's rights to opt into interconnection agreements under § 252 of the Act.

### **5.13 Default**

5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar Days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

### **5.14 Disclaimer of Agency**

5.14.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

### **5.15 Severability**

5.15.1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

### **5.16 Nondisclosure**

5.16.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans, End User Customer specific, facility specific, or usage specific information, other than End User Customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked

at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information. Each Party shall have the right to correct an inadvertent failure to identify information as Proprietary Information by giving written notification within thirty (30) Days after the information is disclosed. The receiving Party shall from that time forward, treat such information as Proprietary Information. To the extent permitted by Applicable Law, either Party may disclose to the other proprietary or confidential customer, technical or business information.

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. Each Party shall use the other Party's Proprietary Information only in connection with this Agreement and in accordance with Applicable Law, including but not limited to, 47 U.S.C. § 222. In accordance with Section 222 of the Act, when either Party receives or obtains Proprietary Information from the other Party for purposes of providing any Telecommunications Services, that Party shall use such information only for such purpose, and shall not use such information for its own marketing efforts. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing. Violations of these obligations shall subject a Party's employees to disciplinary action up to and including termination of employment. If either Party loses, or makes an unauthorized disclosure of, the other Party's Proprietary Information, it will notify such other Party immediately and use reasonable efforts to retrieve the information.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- b) is or becomes publicly known through no wrongful act of the receiving Party; or
- c) is rightfully received from a third Person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
- d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e) is disclosed to a third Person by the disclosing Party without similar restrictions on such third Person's rights; or

- f) is approved for release by written authorization of the disclosing Party; or
- g) is required to be disclosed by the receiving Party pursuant to Applicable Law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

5.16.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected. In addition either Party shall have the right to disclose Proprietary Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any proceeding arising under or relating in any way to this Agreement or the conduct of either Party in connection with this Agreement, including without limitation the approval of this Agreement, or in any proceedings concerning the provision of InterLATA services by Qwest that are or may be required by the Act. The Parties agree to cooperate with each other in order to seek appropriate protection or treatment of such Proprietary Information pursuant to an appropriate protective order in any such proceeding.

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 Forecasts provided by either Party to the other Party shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to Qwest's legal personnel in connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which CLEC provided it to Qwest under this Agreement, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not

authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 Upon the specific order of the Commission, Qwest may provide the forecast information that CLEC has made available to Qwest under this Agreement, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to CLEC involved, in order to allow it to prosecute such procedures to their completion.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

## **5.17 Survival**

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## **5.18 Dispute Resolution**

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive remedy for all disputes between Qwest and CLEC arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement,



and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 5.18.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the Telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 5.18. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. 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 or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty-eight (48) hours of the determination to arbitrate.

5.18.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 5.18.3.1, however, the first matter to be addressed by the arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the arbitrator to an understanding and determination of the Dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the arbitrator. The arbitrator shall resolve any Disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

5.18.3.3 Arbitrator's Decision

5.18.3.3.1 The arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the arbitrator's findings of fact and conclusions of law.

5.18.3.3.2 An interlocutory decision and award of the arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the arbitrator shall remain in effect, but the enjoined Party may make an application to the arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

5.18.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide fifteen (15) calendar Days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

5.18.4 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 attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues. No Dispute relating to bills submitted by either Party to the other Party may be brought more than one hundred twenty (120) Days after the date of the bill(s) at issue.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

5.18.8 This Section does not apply to any claim, controversy or Dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with applicable federal law and the state law of South Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of South Dakota.

## **5.20 Responsibility for Environmental Contamination**

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any Environmental Hazard that either Party did not introduce to the affected Work Location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that the Indemnifying Party, its contractors or agents introduce to the Work Locations or (ii) the presence or release of any Environmental Hazard for which the Indemnifying Party is responsible under Applicable Law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement or equipment placement activities undertaken by CLEC, which are not in accordance with Technical Publication 77350, that result in the release of respirable asbestos from asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

## **5.21 Notices**

5.21.1 Any notices required by or concerning this Agreement shall be in writing and shall be sufficiently given if delivered personally, delivered by prepaid overnight express service, or sent by certified mail, return receipt requested, or by email where specified in this Agreement to Qwest and CLEC at the addresses shown below:

Qwest Corporation  
Director - Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202  
Phone: 303-965-3029  
Fax: 303-896-7077  
Email: [intagree@qwest.com](mailto:intagree@qwest.com)

With copy to:  
Qwest Law Department  
Attention: Corporate Counsel, Interconnection  
1801 California Street, 10<sup>th</sup> Floor  
Denver, CO 80202

and to CLEC at the address shown below:

Covad Communications  
Mr. Jim Kirkland  
Senior Vice President and Senior Counsel  
110 Rio Robles  
San Jose, CA 95134-1813  
Phone: (408)952-6400  
Fax: (408)952-7539  
Email: kirkland@covad.com

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any change in the above contact Person and/or address using the method of notice called for in this Section 5.21.

## **5.22 Responsibility of Each Party**

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

## **5.23 No Third Party Beneficiaries**

5.23.1 The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

## **5.24 Reserved for Future Use**

5.24.1 Reserved for Future Use.

## **5.25 Publicity**

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

## **5.26 Executed in Counterparts**

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

## **5.27 Compliance**

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## **5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994**

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

## **5.29 Cooperation**

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, Provisioning and Billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

## **5.30 Amendments**

5.30.1 Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar Days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.

5.30.2 Intentionally Left Blank.

5.30.3 The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Agreement may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**5.31 Entire Agreement**

5.31.1 This Agreement (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Agreement and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Agreement.

5.32 Intentionally Left Blank

5.33 None of the terms and conditions contained herein shall be construed, interpreted or applied to limit or in any way impede the full and complete execution upon, or enforceability of, any separate or independent agreement entered into by the Parties relating to the purchase of services or other network components that are not required to be included under this Agreement or any other agreement that must be filed pursuant to Section 252 of the Act. Any separate or independent agreement entered into by the Parties that creates a filing obligation pursuant to Section 252 must be filed as an interconnection agreement with the appropriate state commissions(s). The Parties enter into this Agreement without waiving any current or future legal rights and without prejudicing any position either Party may take on issues before state or federal regulatory or legislative bodies or courts of competent jurisdiction.

#### **Section 6.0 – RESALE**

**This agreement does not include resale or resale commingling. In the event CLEC wishes to order resale or resale commingling, the Parties will negotiate an amendment to this agreement, subject to Applicable Law.**

## **Section 7.0 - INTERCONNECTION**

CLEC does not intend to order Interconnection; however in the event CLEC wishes to order Interconnection, the Parties will negotiate an appropriate amendment to this Agreement.



## Section 8.0 – COLLOCATION

### 8.1 Description

8.1.1 Collocation allows for the placing of equipment by CLEC at Qwest's Premises, where Technically Feasible and space is legitimately available, that is necessary for accessing Unbundled Network Elements (UNEs), ancillary services or Interconnection. Collocation includes the leasing to CLEC of physical space in Qwest Premises, as well as the resources necessary for the operation and economical use of collocated equipment, such as the use by CLEC of power; heating, ventilation and air conditioning (HVAC); and cabling in Qwest's Premises. Collocation also allows CLEC to access Interconnection Distribution Frames (ICDF) for the purpose of accessing and combining Unbundled Network Elements and accessing ancillary services. There are currently eight (8) standard types of Collocation available pursuant to this Agreement – Virtual, Caged Physical, Shared Caged Physical, Cageless Physical, Interconnection Distribution Frame, Adjacent Collocation, Common Area Splitter Collocation, and Remote Collocation. Other types of Collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of Collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this Agreement. Nothing in this Agreement shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the Parties or ordered by the state Commission or any other competent authority

8.1.1.1 Virtual Collocation -- A Virtual Collocation arrangement requires CLEC to purchase and deliver to Qwest CLEC's own equipment for Qwest to install, repair, and maintain in Qwest's Premises. CLEC does not have physical access to its virtually collocated equipment in the Qwest Premises.

8.1.1.2 Caged Physical Collocation -- allows CLEC to lease caged floor space for placement of its equipment within Qwest's Premises for the purpose of interconnecting with Qwest Finished Services or accessing Unbundled Network Elements. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within the cage.

8.1.1.3 Cageless Physical Collocation -- is a non-caged area within a Qwest Premises. Qwest shall provide such space in an efficient manner that minimizes the time and costs. In Wire Centers, space will be made available in single frame bay increments. Qwest shall provide space, where available, in existing Qwest line ups, under existing cable racking and ironwork, where there is existing HVAC and proximately available power supplies, subject to the reservation guidelines set forth in Section 8.2.1.16. In Wire Centers, the current minimum square footage is nine (9) square feet per bay, however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly. Space will be provided utilizing industry standard equipment bay configurations in which CLEC can place and maintain its own equipment. CLEC is responsible for the procurement, installation and on-going maintenance of its equipment as well as the Cross Connections required within CLEC's leased Collocation space. CLEC may elect to share its Cageless Collocation space (e.g.

sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, provisioning, repairing, maintaining, and billing for equipment, cross-connects, and services in its Collocation space.

8.1.1.4 Shared Caged Physical Collocation -- allows two (2) or more CLECs to share or sublease a single Collocation enclosure. Under Shared Physical Collocation, one (1) CLEC obtains a Caged Physical Collocation arrangement from Qwest pursuant to this Agreement or an approved Interconnection agreement, and another CLEC, pursuant to the terms of its Agreement or approved Interconnection agreement, may share use of that space, in accordance to terms and conditions of a sublease agreement between the two (2) CLECs. Shared Collocation may also be established through joint Application by CLECs in which Qwest will have a separate Billing relationship with each applicant and will look to each collocating CLEC for payment of its proportionate share of the charges relating to the Collocation space. Qwest will prorate the charge for site conditioning and preparation undertaken by Qwest to construct the Shared Collocation cage or condition the space for Collocation use, regardless of how many Carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating CLEC (and billed directly to each such CLEC) based on the percentage of the total space utilized by that CLEC as per the Collocation Application. Qwest shall not place unreasonable restrictions on CLEC's use of a Collocation cage, such as limiting CLEC's ability to contract with other CLECs to share CLEC's Collocation cage in a sublease-type arrangement. In addition, if two (2) or more CLECs who have Interconnection agreements with Qwest utilize a Shared Collocation arrangement, Qwest shall permit each CLEC to order UNEs to and provision service from that Shared Collocation space, regardless of which CLEC was the original collocator, directly from Qwest. Qwest shall make Shared Collocation space available in single-bay increments or their equivalent.

8.1.1.5 Interconnection Distribution Frame (ICDF) Collocation -- is offered for the purpose of facilitating CLEC's combining of Unbundled Network Elements and ancillary services. Under ICDF Collocation, CLEC need not collocate equipment in the Qwest Wire Center. With ICDF Collocation, CLEC will have access to the Qwest Wire Center and an ICDF to combine UNEs and ancillary services. The ICDF connects through tie cables to various points within the Wire Center (e.g., MDF, COSMIC™ or DSX, etc.) providing CLEC with access to UNEs and ancillary services.

8.1.1.5.1 The ICDF is a distribution frame shared by multiple providers. If CLEC desires a dedicated distribution frame for the purpose of facilitating CLEC's combination of UNEs and ancillary services, CLEC may do so through the placement of a CLEC-owned Cross Connection device collocated in the Qwest Wire Center through either Caged or Cageless Physical Collocation.

8.1.1.6 Adjacent Collocation -- is available in those instances where space is legitimately exhausted in a particular Qwest Premises to accommodate Physical Collocation. Qwest shall make space available in adjacent controlled environmental vaults, controlled environmental huts, or similar structures to the extent Technically Feasible. Qwest shall permit CLEC to construct or otherwise procure such an adjacent structure on property owned, leased or otherwise controlled by Qwest, subject only to applicable OSHA, EPA, federal, state, and local safety and maintenance requirements. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's

approval, which approval may not be unreasonably withheld or delayed. Qwest must provide power and Physical Collocation services and facilities, subject to the same nondiscrimination requirements as applicable to any other Physical Collocation arrangement. Qwest must permit CLEC to place its own equipment, including, but not limited to, copper cables, coaxial cables, fiber cables, and Telecommunications equipment, in adjacent facilities constructed by Qwest, by CLEC itself, or a third party.

8.1.1.7 Common Area Splitter Collocation – See Section 9.4 for a description.

8.1.1.8 Remote Collocation – allows CLEC to collocate equipment in or adjacent to a Qwest Remote Premises. The terms for Remote Collocation are set forth more fully in Section 8.2.7 and 8.4.6.

8.1.1.8.1 With respect to Cross Connections for access to Subloop elements in multi-tenant environments (MTE), and field connection points (FCP), the provisions concerning Subloop access and intervals are contained in Section 9.3. This type of access and Cross Connection is not Collocation.

## 8.1.2 Collocation – Available Inventory

8.1.2.1 Collocation Available Inventory provides the terms and conditions under which (1) CLEC can purchase returned Collocation sites and elements (“Qwest Postings”) and (2) CLEC may post CLEC controlled sites that are available for a Transfer Of Responsibility (“CLEC Postings”). Available sites will be posted on the “Collocation Classified” web site: <http://www.qwest.com/cgi-bin/wholesale/collocation.cgi>.

8.1.2.1.1 Qwest Postings: Collocation sites available on the Qwest Available Inventory list may be totally or partially completed before being returned to Qwest inventory. Both caged and cageless sites will be offered on the inventory list. Sites will be offered “AS IS, WHERE IS.”

8.1.2.1.2 CLEC Postings: Available sites listed in the “CLEC Postings” section of the Collocation Classifieds are eligible for Transfer to an assuming CLEC with or without working circuits as described in the Collocation Transfer of Responsibility Product offering.

8.1.2.1.3 The “Collocation Classified” web site refers to a tool used by CLEC and Qwest to post listings of available collocation sites. The site contains Qwest Postings and CLEC Postings.

## 8.1.3 Collocation – Joint Testing

8.1.3.1 Qwest’s Joint Testing at the Interconnection Distribution Frame (ICDF) allows a CLEC to request Qwest to participate in Joint Testing of CLEC terminations at the ICDF once CLEC’s equipment has been placed in CLEC’s Collocation.

## 8.1.4 Collocation – DC Power Reduction

8.1.4.1 Qwest’s Power Reduction Procedure offers CLEC the option to reduce power on an existing feed. It allows a CLEC to reserve a fuse or breaker position on the

power board or Battery Distribution Fuse Bay (BDFB) when reducing a multiple feed to zero. CLEC's payment of the Monthly Power Maintenance charge will provide an option to hold the existing power cabling and fuse position for the CLEC's future power augment requests as described in Section 8.2.11.6 below.

#### **8.1.5 Collocation – Cancellation of Collocation Application**

8.1.5.1 Cancellation of Collocation Request. CLEC may cancel a Collocation request prior to the completion of the request by Qwest. CLEC does so by submitting a written request by certified mail to the Qwest account manager. CLEC shall be responsible for payment of all costs incurred by Qwest up to the point when the cancellation is received.

8.1.5.1.1 Cancellation is available for all Collocation sites under a particular Billing Authorization Number (BAN) for which the CLEC has NOT received notification of completion from Qwest. A Cancellation will only occur upon request by the canceling CLEC.

8.1.5.2 Cancellation is offered for all types of Collocation.

8.1.5.3 A request for Cancellation is irrevocable once Qwest has accepted the application.

#### **8.1.6 Collocation – Decommissioning of Collocation Space**

8.1.6.1 Decommissioning refers to the deactivation of a Collocation site occupied by CLEC and removal of CLEC equipment there from.

8.1.6.2 Decommissioning is offered for all types of Collocation.

8.1.6.3 A request for Decommissioning is irrevocable once Qwest accepts the application.

#### **8.1.7 Collocation – Transfer of Responsibility**

8.1.7.1 Transfer of Responsibility refers to the transfer of a Collocation site to an assuming CLEC or from a vacating CLEC subject to the conditions set forth herein. A Transfer of Responsibility Collocation site is identified via the vacating CLEC's 11 character CLLI™ code.

8.1.7.2 Transfer of Responsibility is offered for Caged Physical, Cageless Physical, Shared Caged and Virtual Collocation.

8.1.7.3 All other types of Collocation to be transferred will be handled on an

Individual Case Basis (ICB) by contacting the appropriate Qwest Wholesale Project Manager (WPM).

8.1.7.4 There are two types of Transfer of Responsibility:

8.1.7.4.1 Transfer of Responsibility without working circuits – there are no active terminations (e.g., Digital Signal Level 0 (DS0), Digital Signal Level 1 (DS1)) for the Collocation site to be transferred.

8.1.7.4.2 Transfer of Responsibility with working circuits – active terminations (e.g., DS0, DS1) are associated with the Collocation site to be transferred.

8.1.7.5 Transfer of Responsibility with working circuits is offered if only administrative changes are required and the transfer does not involve translations activity that need to be processed in conjunction with the transfer. If the CLEC's transfer plans allow for the completion of the Transfer of Responsibility prior to the translation activity, then the transfer request would be permissible within the product offering.

8.1.7.6 A request for Transfer of Responsibility is irrevocable upon one hundred percent (100%) payment by the assuming CLEC of the nonrecurring Collocation transfer charges reflected on the quote.

## **8.2 Terms and Conditions**

### **8.2.1 Terms and Conditions - All Collocation**

8.2.1.1 Qwest shall provide Collocation on rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall provide Collocation in accordance with all applicable federal and state laws.

8.2.1.1.1 In accordance with the FCC rules regarding combinations of Unbundled Network Elements and Commingling of facilities and services which are addressed in Sections 9.1 and 9.23, Qwest will not Commingle services or Network Elements that are offered to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

8.2.1.1.1.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

8.2.1.1.1.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

8.2.1.2 Collocation of Switching Equipment. CLEC may collocate any equipment that is necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.2.1 Digital Subscriber Line Access Multiplexers (DSLAMS) always meet this legal standard.

8.2.1.2.2 Asynchronous Transfer Mode (ATM) or Packet Switching equipment also meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL or VoDSL. Equipment used predominantly to support DSLAMs and ATMs, such as routers and concentrators, as well as testing and network management equipment also meet this legal standard. Before any equipment that includes switching functionality is installed, CLEC must provide a written inventory to Qwest of all switching equipment and how it will be used for Interconnection or access to Unbundled Network Elements. Once CLEC establishes that it will use a certain type of equipment for Interconnection or access to Unbundled Network Elements, Qwest will allow future Collocations of similar equipment without requesting a written justification unless and until Qwest can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Qwest will complete the Collocation within the appropriate interval unless granted relief by the Commission.

8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Local Exchange Service.

8.2.1.2.4 Except as provided for in Sections 8.2.1.2.1 through 8.2.1.2.3 above, CLEC may not collocate equipment that is not necessary for Interconnection or access to Unbundled Network Elements.

8.2.1.3 CLEC must identify what transmission and Cross Connection equipment will be installed and the vendor technical specifications of such equipment so that Qwest may verify the appropriate power, floor loading, heat release, environmental particulate level, HVAC, and tie cables to CLEC-provided Cross Connection device.

8.2.1.4 Demarcation Points for Unbundled Network Elements (UNEs) and ancillary services. The Demarcation Point for Unbundled Network Elements and ancillary services is that physical point where Qwest shall terminate its Unbundled Network Elements and ancillary services for access by CLEC. There are two (2) standard Demarcation Points where Unbundled Network Elements and ancillary services may be delivered to CLEC. CLEC shall specify its choice of standard Demarcation Points for its access to UNEs and ancillary services. One available Demarcation Point is at CLEC-provided Cross Connection equipment in CLEC's Physical or Virtual Collocation space. Alternatively, the Demarcation Point can be at an Interconnection Distribution Frame (ICDF) or may be established at a location jointly agreed to by CLEC

and Qwest. To the extent CLEC selects a Demarcation Point outside of its collocated space, CLEC shall provide and Qwest shall install the tie cables from CLEC's collocated equipment to the Demarcation Point. Alternatively, Qwest shall provide and install these tie cables, at CLEC's expense. CLEC shall be provided with access to all test access points on the ICDF or at the first test point in the Qwest network at which CLEC's cables terminate on the ICDF or on the MDF in offices where there is no ICDF.

8.2.1.5 Qwest will provide a connection between Unbundled Network Elements and ancillary services and a Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). The Demarcation Point shall be:

- a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation space; or
- b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or
- c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF;
- d) at a direct connection point of termination as described in Section 8.3.1.11.2; or
- e) at another Demarcation Point mutually-agreed to by the Parties.

8.2.1.6 CLEC may purchase Qwest's finished Private Line or Switched Access Services via applicable Tariff terms and conditions. These services will be terminated at the Demarcation Point.

8.2.1.7 For Caged and Cageless Physical Collocation, Shared Caged Physical Collocation and Virtual Collocation, CLEC must lease space for the placement of CLEC's equipment within Qwest's Premises. Qwest will provide the structure that is necessary in support of Collocation including physical space, a cage (for Caged Physical Collocation), required cabling between equipment and other associated hardware.

8.2.1.8 All equipment shall meet and be installed in accordance with Network Equipment Building System (NEBS) Level 1 safety standards. Qwest shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Qwest shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Qwest imposes on its own equipment located on its Premises. Applicable documents are available via the PCAT.

8.2.1.9 Space Availability Report -- Upon request by CLEC, Qwest will submit to a requesting CLEC within ten (10) calendar Days of CLEC's request, a report for each requested Premises, that includes:

- a) available Collocation space in a particular Qwest Premises (including new collocation space as well as available inventory collocation space);
- b) number of collocators;
- c) any modifications in the use of the space since the last report;

- d) measures that Qwest is taking to make additional space available for Collocation;
- e) whether sufficient power is available to meet the specific CLEC request;
- f) number of CLECs in queue at the Premises, if any;
- g) whether the Wire Center is equipped with DS3 capability; and
- h) the number and description of Qwest and its Affiliates and CLEC reservations of space.

8.2.1.9.1 A Space Availability Report Charge in Exhibit A will apply to each Space Availability Report requested by CLEC and shall apply on per Premises basis.

8.2.1.9.2 Inventory Report – Remote Premises. The locations of the Remote Premises (e.g., Feeder Distribution Interfaces, "FDI") and the Customer addresses served by each Remote Premises are available to CLECs through the Raw Loop Data Tool. Remote Premises with Digital Loop Carrier and Pair Gain equipment will be provided on the web site in the ICONN database. (ICONN is available through the Qwest web site located at <http://www.qwest.com/iconn>.) If CLEC is unable to determine the information it seeks regarding Remote Premises after using such database tools, Qwest will provide CLEC with a report that contains the information. The Parties agree that a charge may apply to such report, based on time and material, unless the database information is inaccurate or unusable for the Remote Premises then no charge would apply. Qwest will provide CLEC access to relevant plats, maps, engineering records and other data in accordance with Section 10.8.2.4. In addition, CLEC can request a copy of Qwest's distribution area map associated with the Remote Premises, with a charge for time and material.

8.2.1.10 Collocation is offered on a first-come, first-served basis. Requests for Collocation may be denied due to technical infeasibility and/or the legitimate lack of sufficient space in a Qwest Premises for placement of CLEC's equipment. If Qwest determines that the amount of space requested by CLEC for Caged Physical Collocation is not available, but a lesser amount of space is available, that lesser amount of space will be offered to CLEC for Caged Physical Collocation. Alternatively, CLEC will be offered Cageless Physical Collocation (single frame bay increments), or Virtual Collocation as an alternative to Caged Physical Collocation. In the event the original Collocation request is not available due to lack of sufficient space, and CLEC did not specify an alternative form of Collocation on the original order form, CLEC will be required to submit a new order for CLEC's preferred alternative Collocation arrangement. If CLEC identifies alternate choices for Collocation on its original Collocation request, Qwest will determine the feasibility of the next preferred option in the event CLEC's first choice is not available. To the extent possible, Qwest shall make contiguous space available to CLEC when it seeks to expand its existing Collocation space. Where adjoining space is not available, Qwest will engineer a route for CLEC to provide facilities between the non-adjoining CLEC Collocation spaces as part of the Collocation order. When planning renovations of existing facilities or constructing or leasing new facilities, Qwest shall take into account projected demand for Collocation of



equipment. In rendering its determination as to whether space is available to fulfill a CLEC request for new collocation, collocation augment or Available Inventory Collocation, Qwest will review the application to determine whether there is new, vacated, returned or abandoned space, offered "as is" or modified, that may fill the CLEC's requirement.

8.2.1.10.1 Space Denial Queue – Qwest will maintain a list of denied Collocation requests, in order of the date of receipt (Space Denial Queue), for each Premises where Qwest has exhausted Collocation space. A separate queue will be maintained for each Premises. When space becomes available in a Premises in which a queue has developed, Qwest will inform CLECs in the queue that space for Collocation has become available. If there is insufficient space to accommodate all CLECs in queue, Qwest shall notify CLECs of the availability of space in accordance with CLEC's position in the queue. CLEC must respond within fifteen (15) calendar Days of receipt of notification from Qwest with a new Collocation Application. If CLEC does not provide a Collocation Application within fifteen (15) calendar Days of receipt of notification, or if CLEC responds that it no longer requires the Collocation space, CLEC shall be removed from the queue and the available space shall be offered to the next CLEC in the queue. If the space made available to a CLEC in the queue is not sufficient to meet such CLEC's needs, such CLEC may deny the space that becomes available and keep its position in the queue.

8.2.1.11 If Qwest denies a request for Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to tour the entire Premises escorted by Qwest personnel within fourteen (14) calendar Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed floor plans for the Premises with CLEC during the tour, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact, it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Collocation Application Date for determining RFS unless both Parties agree to a revised date.

8.2.1.12 Qwest shall submit to the Commission, subject to any protective order as the Commission may deem necessary, detailed floor plans or diagrams of any Premises where Qwest claims that Physical Collocation is not practical because of space limitations.

8.2.1.13 Qwest will maintain a publicly available document, posted for viewing on the Internet, (<http://www.qwest.com/wholesale/notices/collo/spaceavail.html>) indicating all Premises that are full, and will update this document within ten (10) calendar Days of the date at which a Premises runs out of physical space and will update the document within ten (10) calendar Days of the date that space becomes available. In addition, the publicly available document shall include, based on information Qwest develops through the Space Availability Report process, the Reservation Process, or the Feasibility Study Process:

- a) Number of CLECs in queue at the Premises, if any;

- b) Premises that have not been equipped with DS3 capability;
- c) Estimated date for completion of power equipment additions that will lift the restriction of Collocation at the Premises; and
- d) Address of the Remote Premises that have been inventoried for Remote Collocation, and if the Remote Premises cannot accommodate Collocation.

Notwithstanding the foregoing, the Qwest web site will list and update within the ten (10) Day period, all Wire Centers that are full, whether or not there has been a CLEC requested Space Availability Report.

#### 8.2.1.14 Reclamation and Reconditioning of Space

8.2.1.14.1 Reclamation of Space -- Reclamation of space is performed by Qwest removing unused, obsolete Qwest equipment to make space for equipment use. The cost of removal of the obsolete unused equipment shall be borne by Qwest.

8.2.1.14.1.1 If CLEC issues a forecast or reservation for Collocation, Qwest shall use its best judgement to determine whether it would be appropriate to reclaim space and or equipment to meet expected Collocation requirements.

8.2.1.14.1.2 If CLEC issues a Collocation Application and unused, obsolete equipment must be removed to provide the requested Collocation, Qwest will affirmatively remove such unused, obsolete equipment as necessary to fulfill the Collocation request within the applicable interval set forth in section 8.4.

8.2.1.14.2 Reconditioning of Space -- Reconditioning of space is the remodeling of space for equipment use, such as, but not limited to, adding HVAC. The Collocation feasibility study will identify whether reconditioning of space is available and necessary to meet CLEC needs for Collocation. If requested by CLEC, Qwest will assess the cost of such reconditioning, provide a quote to CLEC for the costs, and upon Acceptance of quote by CLEC, perform the necessary work to recondition the space. For reconditioned space, CLEC is responsible for prorated charges based on the amount of space requested.

#### 8.2.1.15 Intentionally left blank.

8.2.1.16 Qwest may retain a limited amount of floor space for its own specific future uses, provided, however, that neither Qwest nor any of its Affiliates may reserve space for future use on terms more favorable than those that apply to CLEC's reservation of Collocation space for CLEC's own future use. Qwest shall relinquish any space held for future use before denying a request for Virtual Collocation on the grounds of space limitations, unless Qwest proves to the Commission that Virtual Collocation at that point is not Technically Feasible.

8.2.1.17 In addition to the requirements of Section 8.2.1.8, all Collocation installation and structures shall meet applicable earthquake safety rating requirements

comparable to and to the same extent that Qwest installations and structures meet earthquake rating requirements as contained in the Network Equipment Building System (NEBS) - BR GR-63-CORE document. A list of Qwest Premises and the applicable related earthquake ratings is available for review on the Qwest website at: <http://www.qwest.com/wholesale/pcat/collocation.html>.

8.2.1.18 Qwest will review the security requirements, issue keys, ID cards and explain the access control processes to CLEC. Applicable documents are contained in the Collocation PCAT and are titled "Qwest Premises Access. The access control process includes but is not limited to the requirement that all CLEC approved personnel are subject to trespass violations if they are found outside of designated areas and approved areas and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) or if they provide access to unauthorized individuals. Likewise, Qwest personnel are subject to trespass violations if they are found to be wrongfully inside CLEC physical caged collocated areas or if they wrongfully provide access to unauthorized individuals.

8.2.1.18.1 Qwest will take all reasonable measures to insure that CLEC equipment collocated in Qwest Premises is afforded physical security at parity with Qwest's similarly situated equipment. Should an event occur within a Qwest Premises that suggests vandalism, theft of, or other tampering with CLEC's equipment, Qwest will, at CLEC's request, vigorously and thoroughly investigate the situation. CLEC shall cooperate in the investigation as requested by Qwest. Qwest will keep CLEC apprised of the progress of any investigation, and report any conclusions in a timely manner. Qwest will take all reasonable action, consistent with standard Qwest procedures, to deter, to the extent possible, further tampering, vandalism or theft of CLEC equipment.

8.2.1.18.2 Qwest shall have fifteen (15) calendar days to remedy any legitimate safety violation identified by CLEC.

8.2.1.19 Qwest shall provide access to CLEC's collocated equipment, authorized CLEC testing points as described in Section 8.2.1.18 above, existing eyewash stations, bathrooms, and drinking water within the Premises on a twenty-four (24) hours per day, seven (7) Days per week basis for CLEC personnel and its designated agents. Such access shall be permitted without requiring either a security escort of any kind or delaying CLEC's employees entry into Qwest Premises. Qwest shall provide CLEC with access to other basic facilities, including parking, where available on a first-come, first-served basis.

8.2.1.20 CLEC shall be restricted to corridors, stairways, and elevators that provide direct access to CLEC's space, or to the nearest restroom facility from CLEC's designated space and/or authorized test point areas, including the first test point (i.e., the Demarcation Point between the Qwest and CLEC networks) and such direct access will be outlined during CLEC's orientation meeting. Access shall not be permitted to any other portion of the building.

8.2.1.21 Nothing herein shall be construed to limit CLEC's ability to obtain more than one form of Collocation (i.e., Virtual, Caged, Shared and Cageless Physical Collocation or ICDF Collocation) in a single Premises, provided space is available.

## 8.2.1.22 Termination of Collocation Arrangement.

8.2.1.22.1 Collocation Cancellation. The canceling CLEC may only submit a Cancellation Application if a Collocation quote has been accepted and the initial payment has been paid. The collocation Cancellation may only be initiated if the Collocation job is in progress and not yet complete.

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8.2.1.22.1.2 Qwest will stop work on a job in progress upon receipt and acceptance by Qwest of a valid Cancellation Application.

8.2.1.22.1.3 Based on when the Cancellation Application is received by Qwest, the completion status of the Collocation job and the determination of the amount paid to Qwest, the following will occur: Qwest will cancel the Collocation job in progress, conduct an inventory, and issue a final revised quote setting forth the amount due or the appropriate adjustments. The revised final quote will be issued within 30 calendar days of Qwest's acceptance of the Cancellation Application.

8.2.1.22.1.4 The Quote Preparation Fee (QPF) for the original Collocation Request must be paid, if the job is cancelled.

### 8.2.1.22.1.5 Intentionally left blank.

8.2.1.22.1.6 In the event Splitter Collocation with the BAN of the collocation site is to be canceled, such Splitter Collocation will be cancelled automatically pursuant to the submitted Cancellation Application.

8.2.1.22.1.7 In the event that CLEC has requested Direct CLEC-to-CLEC with the BAN of the collocation site to be cancelled, such Direct CLEC-to-CLEC will be cancelled automatically pursuant to the submitted Cancellation Application.

## 8.2.1.22.2 Collocation Decommissioning.

8.2.1.22.2.1 A Collocation site will be considered eligible for decommissioning at any time after the site is built-out and accepted by CLEC.

8.2.1.22.2.2 Qwest requests the vacating CLEC remove equipment prior to submitting a Decommissioning Request. If CLEC does not remove its equipment within thirty (30) calendar days from Qwest's acceptance of the Decommissioning Application, Qwest will send a notification stating the equipment is considered abandoned.

8.2.1.22.2.2.1 Upon receiving notification of abandonment from Qwest, CLEC will have fifteen (15) calendar days to notify Qwest that the equipment is not abandoned and remove the

equipment, unless CLEC receives authorization from Qwest to extend the removal date.

8.2.1.22.2.2.2 In the case of Virtual Collocation, Qwest will automatically remove all equipment within ninety (90) calendar days from receipt of the Decommissioning Request.

8.2.1.22.2.2.3.1 Qwest will negotiate with CLEC for the pick up of the equipment.

8.2.1.22.2.2.3.2 For Virtual Collocation, there will be no cost for the removal of CLEC equipment.

8.2.1.22.2.3 Prior to submitting a Decommissioning Request, financial obligations with respect to the collocation site to be decommissioned must be current, with the exception of formally disputed charges.

8.2.1.22.2.3.1 CLEC financial obligations include payment of 100% of all non-recurring quoted charges and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.1.22.2.4 CLEC must disconnect all services from the Collocation site to be decommissioned prior to submitting the Decommissioning Request. Services to be disconnected by CLEC include, but are not limited to: Unbundled Network Elements (UNE), administrative lines, finished services, and line sharing services. Services will need to be disconnected via Access Service Request (ASR)/Local Service Request (LSR). If CLEC does not disconnect services, all charges with respect to such site will continue to accrue and the Decommissioning Application will be rejected.

8.2.1.22.2.4.1 Prior to disconnecting the circuits associated with the Collocation site CLEC must notify, in writing, all current affected End User Customers of the discontinuation of service.

8.2.1.22.2.4.2 CLEC must submit an e-mail notification attached to the Decommissioning Request representing to Qwest that all End User Customers have been properly notified. Failure to include such representation will result in the rejection of the Decommissioning Request.

8.2.1.22.2.5 When submitting a Decommissioning Request for a Collocation site that also has a Direct CLEC-to-CLEC arrangement:

8.2.1.22.2.5.1 Qwest requires that the Direct CLEC-to-CLEC Connection be disconnected at the same time that Qwest performs the decommissioning.

8.2.1.22.2.5.2 The CLEC submitting the Decommissioning

Request must:

8.2.1.22.2.5.2.1 Submit a Letter of Authorization (LOA) signed by both the vacating CLEC and partnering CLEC that authorizes Qwest to disconnect the installed Direct CLEC-to-CLEC cabling.

8.2.1.22.2.5.2.2 If a copy of the required Letter of Authorization is not attached to the Decommissioning Request; the application will be rejected as incomplete.

8.2.1.22.2.6 Vacating CLEC will be eligible for a potential refund for all elements defined as either reusable or reimbursable at the time of decommissioning, if and when acquired by another CLEC. An inventory will be completed by Qwest and furnished to CLEC within ninety (90) calendar days of the Collocation Decommission Application acceptance identifying the reimbursable and re-useable elements and the potential credit. If CLEC, reasonably and in good faith, disputes the total amount of the credit identified, Qwest will promptly evaluate CLEC's dispute and provide an updated credit amount, if it agrees with CLEC, or an explanation for the credit amount, if it disagrees with CLEC.

8.2.1.22.2.6.1 Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to collocation site, i.e. Express Fiber Entrances) These elements will be eligible for a potential refund for up to one (1) year after the date of decommissioning.

8.2.1.22.2.6.2 Reusable elements include Qwest inventoried components (e.g. cage, bays, HVAC, cable racking) to provision the original Collocation site. These elements will be available for a potential refund for up to three (3) years after decommissioning.

8.2.1.22.2.6.3 Upon assumption of the collocation space by an assuming CLEC, Qwest will issue the applicable credit within thirty (30) days to the vacating CLEC.

8.2.1.22.3 Collocation Transfer of Responsibility.

8.2.1.22.3.1 A Collocation site is considered eligible for Transfer of Responsibility only after Qwest completes the site build-out and the vacating CLEC has accepted the site.

8.2.1.22.3.2 The assuming CLEC is required to have an Interconnection Agreement with Qwest prior to the original CLEC submitting a Transfer of Responsibility request. Assuming CLEC will need to amend any previously-existing Interconnection Agreement prior to submitting a Transfer of Responsibility request if it does not contain the

Terms and Conditions and rate elements for the services that will be transferred.

8.2.1.22.3.2.1 If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with 11 U.S.C. Section 365.

8.2.1.22.3.3 Both vacating and assuming CLEC's Interconnection Agreements with Qwest must contain finalized terms and conditions associated with the Transfer of Responsibility of a Collocation site and all associated services.

8.2.1.22.3.4 The Collocation site referenced in the Transfer of Responsibility request generally will be transferred "as is" and in its entirety. This includes, but is not limited to, entrance facilities (from the Point of Interface (POI) utility hole), Splitters, cables, and working circuits (if applicable). Terms and conditions pertaining to the transfer of equipment between the vacating and assuming CLECs will be the responsibility of the vacating and assuming CLECs.

8.2.1.22.3.5 The assuming CLEC will provide the information Qwest will need to update the following items: Customer Name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), Customer address, phone number, billing and contact information, and contract number. The 11 character CLEC CLLI™ code will remain the same. The Transfer of Responsibility request may not include translations work for associated working circuits.

8.2.1.22.3.5(a) The Transfer of Responsibility request is available if there are no space requests pending by a CLEC or Qwest that could be satisfied by the space that CLEC seeks to transfer, or if the vacating and assuming CLEC were affiliate corporate entities prior to the proposed transfer, or the transfer is due to a bankruptcy court order. Collocation Transfer of Responsibility is not available if another CLEC and/or Qwest are in waiting queue for available space within the requested Central Office.

8.2.1.22.3.6 The negotiation of the transfer terms and conditions between the vacating CLEC and the assuming CLEC is the responsibility of those two Parties. Qwest will only manage the database and records transfer.

8.2.1.22.3.7 Qwest is not responsible for the physical condition of the CLEC's equipment, with the exception of equipment associated with a Virtual Collocation site, as set forth in CLECs' Interconnection Agreement.

8.2.1.22.3.8 If a CLEC submits a Transfer of Responsibility request for a site that has a related Splitter Collocation associated with it, the Splitter Collocation will be transferred as part of the Transfer of Responsibility.

8.2.1.22.3.9 Submission of new connect, change, and disconnect orders will be restricted from quote acceptance until the transfer of the working circuits is complete. If new connect, change, and disconnect orders need to be submitted between quote acceptance and the completion of the transfer, it will be handled on an ICB and could affect the Ready for Service (RFS) date.

8.2.1.22.3.10 Submission of Collocation augment orders will be restricted from the time that the Application for Transfer of Responsibility has been validated until the assuming CLEC has accepted the quote for the Transfer of Responsibility.

8.2.1.22.3.11 All work in progress related to the Collocation site and/or associated working circuits (if applicable) must either be completed or cancelled by vacating CLEC prior to quote acceptance.

8.2.1.22.3.12 If vacating CLEC does not lease another physical Collocation site at the specified Central Office at the time of the Transfer of Responsibility request, then vacating CLEC must relinquish security access to the building.

8.2.1.22.3.13 CLEC's obligations:

8.2.1.22.3.13.1 Prior to submitting a Transfer of Responsibility request, vacating CLEC's financial obligations to Qwest with respect to the Collocation site to be transferred must be met, with the exception of formally disputed charges. The vacating CLEC's financial obligations will include payment of one hundred percent (100%) of all undisputed nonrecurring charges and all undisputed recurring charges for the specific Collocation space that are more than 30 days past due.

8.2.1.22.3.13.2 Prior to submitting a Transfer of Responsibility request, the assuming CLEC's financial obligations to Qwest must be in good standing.

8.2.1.22.3.13.3 Prior to submitting a Transfer of Responsibility (without working circuits) request, vacating CLEC must ensure that no live circuits exist at the Collocation site to be transferred.

8.2.1.22.3.13.4 Prior to transferring a Collocation site with working circuits, vacating CLEC must notify, in writing, all of its current end-users and service customers that utilize its Transfer of Responsibility Collocation site equipment or facilities of the transfer of service to the assuming CLEC, unless vacating CLEC has a waiver from the FCC.

8.2.1.22.3.13.5 Vacating and/or assuming CLEC will be



responsible for submitting Local Service Request (LSR) orders for Unbundled Loops, Enhanced Extended Loops (EELs), Line Sharing, and Line Splitting. Orders to transfer Local Interconnection Service (LIS) trunks and ancillary services (e.g., SS7, 911, Operator Services) with no translation activity, as well as Dark Fiber, Private Line, and Access circuits, will be processed based on the information provided in the Transfer of Responsibility Spreadsheet found in the Product Prerequisite section of the Collocation General PCAT.

8.2.1.22.3.13.6 Assuming CLEC is responsible for Directory Assistance (DA), Operator Services (OS), Directory Listings (DL), Busy Line Verify/Busy Line Interrupt (BLV/BLI), and 911 changes, if applicable. Any additional SS7 changes will need to be made after the transfer is complete.

#### 8.2.1.22.3.14 Required documentation:

8.2.1.22.3.14.1 Transfer of Responsibility Application Form.

8.2.1.22.3.14.2. Vacating CLEC must send Qwest an e-mail notification (if the transfer includes working circuits), along with the Transfer of Responsibility Application, representing to Qwest that all of its end-users and service customers have been properly notified (refer to section 2.14.4). An exception is if the CLEC has a waiver from the FCC, which would then need to be included with the Transfer of Responsibility request.

8.2.1.22.3.14.3 Vacating and assuming CLEC must provide Qwest, along with the Transfer of Responsibility Application, a signed Qwest Transfer Authorization Agreement. Required information on the Qwest Transfer Authorization Agreement: Qwest Central Office Name, applicable CLLI™ codes, Collocation BAN numbers, and charges (as provided by Qwest) for the transfer of the Collocation site.

8.2.1.22.3.14.4 If there are working circuits associated with the Collocation site to be transferred, the vacating or assuming CLEC must complete the Transfer of Responsibility Spreadsheet and submit it along with the Transfer of Responsibility Application.

8.2.1.22.3.14.5 If Collocation site being transferred has a CLEC-to-CLEC (Direct) arrangement, then the CLEC submitting the Transfer of Responsibility must submit a Letter of Authorization (LOA), along with the Transfer of Responsibility Application, signed by both the vacating CLEC and the CLEC partner authorizing the transfer of the CLEC-to-CLEC service to the assuming CLEC. A separate LOA is required, as a condition precedent, for each separate CLEC-to-CLEC relationship with respect to the facility that is the subject matter of the Transfer of

Responsibility Application.

8.2.1.22.3.14.6 Once Collocation site transfer is complete the vacating CLEC, assuming CLEC, and Qwest are all required to sign the Qwest Services Transfer Agreement.

8.2.1.23 Qwest shall design and engineer the most efficient route and cable racking for the connection between CLEC's equipment in its collocated spaces to the collocated equipment of another CLEC located in the same Qwest Premises; or to CLEC's own contiguous and non-contiguous Collocation space. The most efficient route generally will be over existing cable racking, to the extent Technically Feasible, but to determine the most efficient route and cable racking, Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection. CLEC shall have access to the designated route and construct such connection, using copper, coax, optical fiber facilities, or any other Technically Feasible method utilizing a vendor of CLEC's own choosing. CLEC may place its own fiber, coax, copper cable, or any other Technically Feasible connecting facilities outside of the actual Physical Collocation space, subject only to reasonable NEBS Level 1 safety limitations using the route specified by Qwest. CLEC may perform such Interconnections at the ICDF, if desired. CLEC may interconnect its network as described herein to any other collocating Carrier, to any collocated Affiliate of CLEC, to any end users premises, and may interconnect CLEC's own collocated space and/or equipment (e.g., CLEC's Physical Collocation and CLEC's Virtual Collocation on the same Premises). CLEC-to-CLEC Connections shall be ordered either as part of an Application for Collocation under Section 8.4, or separately from a Collocation Application in accordance with Section 8.4.7. CLEC-to-CLEC Cross Connections at an ICDF are available, as follows:

8.2.1.23.1 CLEC-to-CLEC Cross Connections at the ICDF:

8.2.1.23.1.1 CLEC-to-CLEC Cross Connection (COCC-X) is defined as CLEC's capability to order a Cross Connection from its Collocation in a Qwest Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Qwest Premises at the ICDF.

8.2.1.23.1.2 Qwest will provide the capability to combine these separate Collocations through an Interconnection Distribution Frame (ICDF). This is accomplished by the use of CLECs' Connecting Facility Assignment (CFA) terminations residing at an ICDF. Also, ICDF Cross Connections must terminate on the same ICDF at the same service rate level.

8.2.1.23.1.3 If CLEC has its own Dedicated ICDF, CLEC is responsible for ordering tie cables to the common ICDF frame/bay where the other CLEC resides. These tie cables would be ordered through the existing Collocation Application form.

8.2.1.23.1.4 CLEC is responsible for the end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration

may be required, depending on the distance parameters of the combination.

8.2.1.23.1.5 If two (2) CLECs are involved, one CLEC acts as the "ordering" CLEC. The ordering CLEC identifies both connection CFA's on the ASR. CLEC requests service order activity by using the standard ASR forms. These forms are agreed upon nationally at the OBF (Ordering and Billing Forum). Refer to the DMP (Document Management Platform)/Carrier/Carrier Centers/"A"/"ASOG" for copies of all forms including definitions of the fields. CLEC is responsible for obtaining these forms. Qwest must not reproduce copies for its Customers, as this is a copyright violation. The standard industry forms for CLEC-to-CLEC Cross Connections (COCC-X) are: Access Service Request (ASR), Special Access (SPE) and Additional Circuit Information (ACI).

8.2.1.24 Qwest will provide CLEC the same connection to the network as Qwest uses for provision of services to Qwest end users. The direct connection to Qwest's network is provided to CLEC through direct use of Qwest's existing Cross Connection network. CLEC and Qwest will share the same distributing frames for similar types and speeds of equipment, where Technically Feasible and space permitting.

8.2.1.25 CLEC terminations will be placed on the appropriate Qwest Cross Connection frames using standard engineering principles. CLEC terminations will share frame space with Qwest terminations on Qwest frames without a requirement for an intermediate device.

8.2.1.26 If CLEC disagrees with the selection of the Qwest Cross Connection frame, CLEC may request a tour of the Qwest Premises to determine if Cross Connection frame alternatives exist, and may request use of an alternative frame or an alternative arrangement, such as direct connections from CLEC's Collocation space to the MDF or COSMIC™ frame.

8.2.1.27 Conversions of the various Collocation arrangements (e.g., Virtual to Physical) will be considered on an Individual Case Basis. However, conversions from Virtual Collocation to Cageless Physical Collocation, where the conversion only involves an administrative and Billing change, and the virtually collocated equipment is located in a space where Cageless Physical Collocation is available, shall be completed in thirty (30) calendar Days. CLEC must pay all associated conversion charges.

8.2.1.27.1 Qwest will maintain and repair the POTS splitter shelf assembly. If CLEC has Physical Caged or Cageless collocation, CLEC will have the option to perform maintenance and repair of the POTS splitter cards. Election of this option requires CLEC to perform all maintenance associated with the splitter cards including troubleshooting, repair and replacement of cards. CLEC will also be responsible to supply and inventory spare cards including adding new cards to provision un-carded splitter shelf slots. Election of splitter cards maintenance requires CLEC to maintain the splitter cards in all of its common area splitter collocation sites in Qwest's 14 state operating territory. If Qwest maintains the splitter cards, CLEC will not be permitted to remove or replace splitter cards and will only be allowed access for the purposes of troubleshooting and assisting in the isolation of reported troubles to the splitter cards or to add additional card

capacity to an existing shelf. Splitter shelves and associated cabling will continue to be installed and maintained by Qwest; such charges are detailed in the Line Sharing section of Exhibit A.

8.2.1.28 Qwest shall permit CLEC to construct or subcontract the construction and build-out of Physical Collocation arrangements with CLEC employees or CLEC-selected contractors approved by Qwest. Such CLEC construction of Physical Collocation arrangements are for within CLEC's physical space including the cage, if appropriate, frames, and cable racking, and also outside CLEC's physical space, CLEC may install the tie cables, blocks, and terminations on the ICDF or for CLEC-to-CLEC connections. Qwest approval of CLEC contractors involves security access arrangements and shall not be unreasonably withheld. CLEC is not required to use Qwest or Qwest contracted personnel for the engineering and installation of CLEC's collocated equipment. Approval by Qwest of CLEC's employees, vendors or subcontractors shall be based on the same criteria that Qwest uses in approving contractors for its own purposes. Such approval shall not be unreasonably withheld.

8.2.1.29 Qwest will provide CLEC with written notification at least five (5) business days before any scheduled non-emergency AC or DC power work or power related activities in the collocated facility that may cause a power disruption to CLEC equipment located in the Qwest facility, service outage, or otherwise may disrupt service provided by CLEC to its end user customers. This does not include notification of routine power testing or power installation work not expected to cause a power disruption, service outage or other service disruption. Qwest will use diligent efforts to notify CLEC by the Abnormal Condition Report (ACR) of: (a) general power outages as soon as Qwest becomes aware that an outage is to take place or has occurred and (b) any emergency power disruption that would impact CLEC equipment no later than thirty (30) minutes after such activity commences. Finally, Qwest shall immediately notify CLEC by ACR if an alarm condition exists with respect to the monitoring of power that poses a material risk to the continued operation of CLEC equipment.

8.2.1.30 Qwest will inform CLEC of Central Office construction work of Qwest, its employees or any independent contractors retained by it that could affect CLEC's collocated equipment or services offered by CLEC out of that Central Office. Such construction work is that which takes place in or around CLEC's collocation space, work in the space over or around a CLEC's collocation space (e.g., ladder racking work) or collocated equipment, or any work in adjacent areas that will generate dust, debris or falling objects that might impact CLEC's collocation space or collocated equipment. Daily routine equipment work shall be performed in the Central Office without notification to CLEC.

8.2.1.31 Qwest shall provide continuity testing for new, existing or augmented collocation space at any time the CLEC requests such testing.

8.2.1.32 All equipment or property of CLEC not removed from the Qwest Premises within thirty (30) days after (i) the vacation or abandonment thereof, (ii) the breach of any of the terms of Collocation, or (iii) the termination of this Agreement for any cause whatsoever, shall conclusively be deemed to have been abandoned, transferred, deeded, and assigned by CLEC to Qwest and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest without notice to CLEC and without obligation to account therefor, and CLEC shall reimburse Qwest for all reasonable

expenses incurred in connection with the storage or disposition of such equipment or property. The provisions regarding abandoned equipment where CLEC has submitted a Decommissioning Application, are set forth in the Decommissioning Section.

## **8.2.2 Terms and Conditions - Virtual Collocation**

8.2.2.1 Qwest is responsible for installing, maintaining, and repairing virtually collocated equipment for the purpose of Interconnection or to access UNEs, ancillary and Finished Services. When providing Virtual Collocation, Qwest shall install, maintain, and repair collocated equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest.

8.2.2.2 CLEC will not have physical access to the virtually collocated equipment in the Qwest Premises. However, CLEC will have physical access to the Demarcation Point in the Qwest Premises.

8.2.2.3 CLEC will be responsible for obtaining and providing to Qwest administrative codes (e.g., common language codes) for all equipment provided by CLEC and installed in Qwest Premises.

8.2.2.4 CLEC shall ensure that upon receipt of CLEC's virtually collocated equipment by Qwest, all warranties and access to ongoing technical support are passed through to Qwest at CLEC's expense. CLEC shall advise the manufacturer and seller of the virtually collocated equipment that CLEC's equipment will be possessed, installed and maintained by Qwest.

8.2.2.5 CLEC's virtually collocated equipment must comply with Telcordia Network Equipment Building System (NEBS) Level 1 safety standards and any statutory (local, state or federal) and/or regulatory requirements in effect at the time of equipment installation or that subsequently become effective. CLEC shall provide Qwest interface specifications (e.g., electrical, functional, physical and software) of CLEC's virtually collocated equipment. Such safety and engineering standards shall apply to CLEC equipment only to the degree that they apply to Qwest equipment located in Qwest's Premises.

8.2.2.6 CLEC must specify all software options and associated plug-ins for its virtually collocated equipment.

8.2.2.7 CLEC will be responsible for payment of Qwest's initial direct training charges associated with training Qwest employees for the maintenance, operation and installation of CLEC's virtually collocated equipment when such equipment is different than the standard equipment used by Qwest in that Premises. This includes per diem charges (i.e., expenses based upon effective Qwest labor agreements), travel and lodging incurred by Qwest employees attending a vendor-provided training course.

8.2.2.8 CLEC will be responsible for payment of reasonable charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment in accordance with this Agreement, unless otherwise agreed by the Parties. Notwithstanding the

foregoing, CLEC shall not be responsible for any costs or charges incurred in the maintenance and/or repair of CLEC's virtually collocated equipment where such costs or charges result from Qwest's fault or negligence.

### **8.2.3 Terms and Conditions - Caged and Cageless Physical Collocation**

8.2.3.1 Qwest shall provide Caged and Cageless Physical Collocation (including Shared Caged Collocation) to CLEC for access to UNEs and ancillary services and Interconnection, except that Qwest may provide Virtual Collocation if Qwest demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act.

8.2.3.2 Physical Collocation is offered in Premises on a space-available, first come, first-served basis.

8.2.3.3 Reserved for Future Use.

8.2.3.4 Qwest will design the floor space in the most efficient manner possible within each Premises that will constitute CLEC's leased space. CLEC will, in accordance with the other terms and conditions of this Section, have access to its leased space.

8.2.3.5 When Qwest constructs the collocated space, Qwest will ensure that the necessary construction work (e.g., racking, ducting and caging for Caged Physical Collocation) is performed pursuant to Qwest Technical Publication 77350, including all construction of CLEC's leased physical space and the riser from the vault to the leased physical space.

8.2.3.6 CLEC owns or leases and is responsible for the installation, Maintenance and Repair of its equipment located within the physically collocated space leased from Qwest.

8.2.3.7 Qwest shall permit CLEC to commence installation of its equipment prior to completion of Qwest's work on the remaining Collocation infrastructure, at no additional charge to CLEC. Such "early access" date will be negotiated by Qwest and CLEC on a site specific basis. In order to obtain early access, CLEC must pay eighty (80) percent of the remaining fifty (50) percent of the quoted nonrecurring charges before early access is granted, leaving a holdback of ten (10) percent of the originally quoted nonrecurring charges. All appropriate (i.e. space and cable racking) recurring charges will begin on a negotiated date. The enclosure for Caged Physical Collocation must be complete before early access is granted. Such early access by CLEC shall not interfere with the work remaining to be performed by Qwest.

8.2.3.8 Upon completion of the construction of the Collocation project, Qwest will work cooperatively with CLEC in matters of joint testing and maintenance.

8.2.3.9 If, during installation, Qwest determines CLEC activities or equipment do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work until the situation is remedied. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in

compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLECs equipment fails to meet. If such conditions pose an immediate threat to the safety of Qwest employees, interfere with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission, a court of competent jurisdiction or pursuant to Section 5.18 of this Agreement

8.2.3.10 All equipment placed will be subject to random safety audits conducted by Qwest. These audits will determine whether the equipment meets the NEBS Level 1 safety standards required by this Agreement. CLEC will be notified of the results of this audit. If, at any time, pursuant to a random audit or otherwise, Qwest determines that the equipment or the installation does not meet the NEBS standards described in Section 8.2.1.8, CLEC will be responsible for the costs associated with the removal, modification to, or installation of the equipment to bring it into compliance. Qwest shall provide within forty-eight (48) hours written notice of the non-compliance to CLEC, and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC's equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If CLEC fails to correct any non-compliance within fifteen (15) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15) calendar Days of written notice of non-compliance, and if CLEC fails to take all appropriate steps to correct any non-compliance as soon as reasonably possible, Qwest may pursue immediate resolution by the Commission or a court of competent jurisdiction. If there is an immediate threat to the safety of Qwest employees, or an immediate threat to the physical integrity of the conduit system, cable facilities, or other equipment in the Premises, Qwest may perform such work and/or take such action as is necessary to correct the condition at CLEC's expense.

8.2.3.11 Qwest shall provide basic telephone service with a connection jack at the request of CLEC for Caged and Cageless Physical Collocation. Upon CLEC's request, this service shall be available per standard Qwest business service Provisioning processes and rates. CLEC may have access to telephone service provided by Qwest at any ICDF location where test access may be required. CLEC shall share these lines for circuit testing only and may use them only for such purpose.

8.2.3.12 For Caged Physical Collocation, CLEC's leased floor space will be separated from other CLECs and Qwest space through a cage enclosure. Qwest will construct the cage enclosure or CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval which may not be unreasonably withheld, to construct the cage enclosure. All CLEC equipment placed will meet NEBS Level 1 safety standards, and will comply with any

local, state, or federal regulatory requirements in effect at the time of equipment installation or that subsequently become effective.

8.2.3.13 For Cageless Physical Collocation in a Wire Center, the minimum square footage is nine (9) square feet per bay (however, if smaller bays are or become available, Qwest will reduce the minimum square footage accordingly). Requests for multiple bay space will be provided in adjacent bays where possible. CLEC may elect to share its Cageless Collocation space (e.g., sublease a shelf to another CLEC), however, the CLEC of record is solely responsible for ordering, Provisioning, repairing, maintaining, and Billing for equipment, cross-connects, and services in its Collocation space. When contiguous space is not available, bays may be commingled with other CLECs' equipment bays. CLEC may request, through the Qwest Space Reclamation Policy, a price quote to rearrange Qwest equipment to provide CLEC with adjacent space.

## **8.2.4 Transmission Facility Access to Collocation Space**

8.2.4.1 For Virtual or Physical Collocation, CLEC may select from four (4) optional methods for facility access to its Collocation space. They include: 1) fiber entrance facilities, 2) purchasing private line or Access Services, 3) Unbundled Network Elements; and 4) microwave entrance facilities. Other Entrance Facility technologies may be requested through the BFR process.

8.2.4.2 Collocation Fiber Entrance Facilities. Qwest offers three (3) Fiber Collocation Entrance Facility options – Standard Fiber Entrance Facility, Cross-Connect Fiber Entrance Facility, and Express Fiber Entrance Facilities. These options apply to Caged and Cageless Physical Collocation and Virtual Collocation. Fiber Entrance Facilities provide the connectivity between CLEC's collocated equipment within the Qwest Wire Center and a Collocation Point of Interconnection (C-POI) outside the Qwest Wire Center where CLEC shall terminate its fiber-optic facility, except the Express Fiber Entrance Facilities.

8.2.4.3 CLEC is responsible for providing its own fiber facilities to the C-POI outside Qwest's Wire Center. Qwest will extend the fiber cable from the C-POI to a Fiber Distribution Panel (FDP). Additional fiber, conduit and associated riser structure will then be provided by Qwest from the FDP to continue the run to CLEC's leased Collocation space (Caged or Cageless Physical Collocation) or CLEC's equipment (Virtual Collocation). The Qwest provided facility from the C-POI to the leased Collocation space (Physical Collocation) or CLEC equipment (Virtual Collocation) shall be considered the Collocation Fiber Entrance Facility. The preceding provisions do not apply to Express Fiber Entrance Facility which provides that CLEC fiber will be pulled to CLEC Collocation equipment without splices or termination on an FDP.

8.2.4.3.1 Standard Fiber Entrance Facility -- The standard fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to the C-POI and CLEC's Collocation space in increments of 12 fibers. CLEC's fiber cable is spliced into a Qwest-provided shared fiber entrance cable that consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable shall be terminated on a Fiber Distribution Panel (FDP). A 12 fiber Interconnection cable is placed between CLEC's Collocation space and the FDP. The FDP provides Qwest with test access and a connection point between the



transport fiber and CLEC's Interconnection cable.

8.2.4.3.2 Cross-Connect Fiber Entrance Facility -- The cross-connect fiber entrance facility provides fiber connectivity between CLEC's fiber facilities delivered to a C-POI and multiple locations within the Qwest Wire Center. CLEC's fiber cable is spliced into a Qwest provided shared fiber entrance cable in 12 fiber increments. The Qwest fiber cable consists of six buffer tubes containing 12 fibers each for a 72 fiber cable. The 72 fiber cable terminates in a fiber distribution panel. This fiber distribution panel provides test access and flexibility for Cross Connection to a second fiber distribution panel. Fiber Interconnection cables in 4 and 12 fiber options connect the second fiber distribution panel and equipment locations in the Qwest Wire Center. This option has the ability to serve multiple locations or pieces of equipment within the Qwest Wire Center. This option provides maximum flexibility in distributing fibers within the Wire Center and readily supports Virtual and Cageless Physical Collocation and multiple CLEC locations in the office. This option also supports transitions from one form of Collocation to another.

8.2.4.3.3 Express Fiber Entrance Facility -- Qwest will place CLEC-provided fiber cable from the C-POI directly to CLEC's Collocation space. The fiber cable placed in the Wire Center must meet NEBS Level 1 fire rating requirements. If CLEC provided cable does not meet NEBS Level 1 fire rating requirements then a transition splice will occur in the cable vault to insure that the cable within the Qwest Wire Center meets requirements. This option will not be available if there is only one conduit with two (2) unused innerducts (one (1) for emergency restoral and one (1) for a shared entrance cable).

8.2.4.4 Qwest will designate the location of the C-POI for Virtual, Caged Physical or Cageless Physical Collocation arrangements.

8.2.4.5 The Collocation entrance facility is assumed to be fiber optic cable and meets industry standards (GR. 20 Core). Metallic sheath cable is not considered a standard Collocation entrance facility. Requests for non-standard entrances will be considered through the BFR process described in the Bona Fide Request Process Section of this Agreement. All costs and Provisioning intervals for non-standard entrances will be developed on an Individual Case Basis.

8.2.4.6 Qwest shall provide an Interconnection point or points, physically accessible by both Qwest and CLEC, at which the fiber optic cable carrying CLEC's circuits can enter Qwest's Wire Center, provided that Qwest shall designate Interconnection points as close as reasonably possible to its Premises. Qwest shall offer at least two (2) such Interconnection points at each Qwest Wire Center when at least two (2) entry points pre-exist and duct space is available. Qwest will not initiate construction of a second, separate Collocation entrance facility solely for Collocation. If Qwest requires the construction of a new Collocation entrance facility for its own use, then the needs of CLEC will also be taken into consideration.

8.2.4.7 As an alternative to the Fiber Entrance Facilities described above, CLEC may purchase Qwest Tariffed or cataloged Private Line or Switched Access Services.

8.2.4.8 As an alternative to the Fiber Entrance Facilities described above, CLEC

may purchase unbundled dedicated interoffice transport.

8.2.4.9        Microwave Entrance Facilities. Qwest offers Microwave Entrance Facilities on Premises owned or controlled by Qwest, to access CLEC transmission equipment collocated on or inside the Qwest Premises. The rooftop, duct, conduit and riser cable space for Microwave Entrance Facilities is available on a first-come, first-served basis where Technically Feasible. CLEC may place its microwave antenna on a Qwest owned or controlled existing tower, building or supporting structure, where space is available, or CLEC may construct such tower or supporting structure, if necessary and if there is sufficient space and the building structure is not jeopardized. Such microwave equipment will be limited to that which is necessary for Interconnection to Qwest's network or access to Qwest's Unbundled Network Elements.

8.2.4.9.1        Qwest will jointly coordinate and plan with CLEC for the placement and location of the microwave equipment on a non-penetrating roof mount, or an existing tower or supporting structure on the exterior of a Qwest Premises. The method of placing CLEC microwave equipment shall be mutually agreed upon. Tower space or building roof space that allows for unobstructed line-of-sight will be provided by Qwest where Technically Feasible. A weather proof cable entry hatch or an existing wave-guide hatch or other suitable entrance into the building is required. If space is available, CLEC may use an existing cable entry hatch or a new cable entry hatch will need to be constructed. The cable entry hatch charges are on a per Port used basis.

8.2.4.9.2        CLEC can perform the determination of line-of-sight feasibility or CLEC can request Qwest perform the line-of-sight feasibility. CLEC will submit a microwave Entrance Facility application for each antenna arrangement and each Qwest Premises requested. A site visit will include appropriate Qwest and CLEC personnel for the purpose of determining whether an unobstructed line-of-sight is Technically Feasible and structural analysis of the building. The site visit will take place within fifteen (15) calendar after receipt by Qwest of the CLEC's microwave Entrance Facility application, unless the CLEC requests a later date. If CLEC performs the structural analysis and line-of-sight feasibility, it shall submit a response regarding its analysis to Qwest and Qwest will only bill for an escort fee per site requested. If either Party disputes the technical feasibility, space availability, or other conditions proposed by Qwest, the Parties will promptly petition the Commission for resolution of the dispute.

8.2.4.9.3        If Qwest performs the feasibility analysis, a response will be provided to CLEC within thirty (30) calendar Days of the site visit with the structural analysis and line-of-sight feasibility. If the site visit determines that unobstructed line-of-sight and placement of the microwave equipment are not Technically Feasible, CLEC will be billed only for the site visit. If the site visit determines that the placement of microwave equipment is Technically Feasible, Qwest will provide a quote for the microwave Entrance Facility with the quote for the submitted Collocation Application. If CLEC does not submit a Collocation Application for the Premises within thirty (30) Days following the completion of the line-of-sight and structural feasibility analysis or CLEC subsequently cancels the Collocation Application, CLEC will be billed for the site visit.

8.2.4.9.4        CLEC must obtain all necessary variances, licenses, approvals

and authorizations from governmental agencies with jurisdiction, such as use permits, building permits, FCC licenses and FAA approval, if required, to construct, operate and maintain the CLEC facilities. If Qwest's assistance is required in order for CLEC to obtain necessary licenses or permits, Qwest will not unreasonably withhold such assistance. CLEC will pay all expenses associated with that assistance on a time and materials basis.

8.2.4.9.5 CLEC is responsible for the engineering, purchasing, supplying, installing, maintaining, repairing and servicing of its microwave specific equipment. CLEC shall provide the cable from the Radio Frequency (RF) equipment to the building cable entry hatch. However, CLEC is not permitted to penetrate the building exterior wall or roof. Qwest will do all building penetration and Qwest will install the coaxial cable or wave-guide/transmission facility from the cable entry hatch to CLEC's Collocation space within the interval as set forth in Section 8.4 for the type of Collocation requested by CLEC. CLEC facilities shall not physically, electronically, or inductively interfere with the existing Qwest or other CLECs' equipment. Each transmitter individually and all transmitters collectively, for Qwest, Qwest Affiliates and CLECs, at a given location shall comply with appropriate federal, state, and local regulations governing the safe levels of RF radiation.

8.2.4.9.6 Upon expiration or termination, CLEC shall return the antenna space to its original condition. CLEC shall repair any damages caused by removal of its microwave equipment, or by the use, operation or placement of its microwave equipment on the Premises. If CLEC performs the foregoing, Qwest shall impose no charges on CLEC for such work. In the event the CLEC fails to remove its microwave equipment, CLEC shall be liable to Qwest for all reasonable costs of removal, restoration of the property, storage, and transportation to CLEC of such microwave equipment incurred by Qwest.

## 8.2.5 Terms and Conditions – ICDF Collocation

8.2.5.1 Interconnection Distribution Frame (ICDF) Collocation is available if CLEC has not obtained Caged or Cageless Physical Collocation, but requires access to the Qwest Wire Center for combining Unbundled Network Elements, Finished Services, including local Interconnection trunks, and ancillary services. ICDF Collocation provides CLEC with access to the Interconnection Distribution Frame, where Qwest will terminate the Unbundled Network Elements, Finished Service and ancillary services ordered by CLEC. CLEC may combine such services by running a jumper on the ICDF, in accordance with Section 8.2.5.3. CLEC access to the ICDF will be on the same terms and conditions described for other types of Collocation in this Section. There are multiple frames that could be used for ICDF Collocation including, but not limited to, the following: a) existing Interconnection Distribution Frame (ICDF); b) existing DSX panels for DS-1 and DS-3 services; c) new Interconnection Distribution Frame; d) existing toll frame; e) fiber distribution panel; and, f) existing intermediate frame. CLEC requested combinations at the ICDF must be in accordance with Sections 9.1 and 9.23. Qwest provided combinations in accordance with Sections 9.1 and 9.23.3.7 are not provided by Qwest in CLEC's ICDF Collocation space.

8.2.5.2 All Qwest terminations on the Interconnection Distribution Frame will be given a frame address. Qwest will establish and maintain frame address records for Qwest terminations. Qwest will maintain assignment records for each Unbundled Network Element and ancillary service ordered by CLEC that is terminated on the Interconnection Distribution Frame. Qwest will provide CLEC with the frame assignments for each Unbundled Network Element and ancillary service terminated on the ICDF.

8.2.5.3 CLEC will be required to place the jumper connection between frame addresses to connect Unbundled Loops, ancillary and Finished Services. CLEC will be required to maintain the records for CLEC-provided jumpers.

8.2.5.4 Reserved for Future Use.

## **8.2.6 Terms and Conditions - Adjacent Collocation and Adjacent Remote Collocation**

8.2.6.1 CLEC may request Adjacent Collocation and Adjacent Remote Collocation in an existing Qwest controlled environmental vault, controlled environmental hut, or similar structures on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises, to the extent Technically Feasible. Adjacent Collocation in an existing structure shall be ordered as Physical Collocation.

8.2.6.1.1 Alternatively, if no such structure described above exists, CLEC may choose to construct or procure a structure to place on or under Qwest owned, leased or otherwise controlled property contiguous to a Qwest Premises. Such adjacent structure shall be in accordance with Qwest's design and space planning for the site. CLEC may propose the design for the adjacent structure, subject to Qwest's approval. Qwest will review the building and property plans for the new structure within thirty (30) calendar Days.

8.2.6.1.2 CLEC shall own such structure, subject to a reasonable ground space lease. If CLEC terminates its Adjacent Collocation space, Qwest shall have the right of first refusal to such structure under terms to be mutually agreed upon by the Parties. In the event Qwest declines to take the structure or terms cannot be agreed upon, CLEC may transfer such structure to another CLEC for use for Interconnection and or access to UNEs. Transfer to another CLEC shall be subject to Qwest's approval, which approval shall not be unreasonably withheld. If no transfer of ownership occurs, CLEC is responsible for removal of the structure and returning the property to its original condition.

8.2.6.2 Qwest shall provide written authorization for use of Qwest's property to CLEC or CLEC's contractor, to the extent that Qwest owns or controls such property, to assist CLEC in obtaining any building permits or other approvals that may be necessary to construct the facility. CLEC is responsible for construction of the structure or procurement of an existing structure. CLEC is responsible for meeting all state and municipal building and zoning requirements.

8.2.6.3 Qwest will provide power and all other Physical Collocation services and facilities.

8.2.6.4 Upon request, Qwest will evaluate all parking or other spaces outside the

Qwest Premises on Qwest property that can be reasonably made available to CLEC for Adjacent Collocation. Qwest will retain a reasonable amount of parking space for Qwest technicians or other vehicles, including CLEC's. Space below a hoisting area will not be relinquished for Collocation space.

8.2.6.5 If Physical Collocation space becomes available in a previously exhausted Qwest structure, Qwest shall not require CLEC to move, or prohibit CLEC from moving its Collocation arrangement into the Qwest structure. Instead, Qwest shall continue to allow CLEC to collocate in any adjacent controlled environmental vault, controlled environmental hut, or similar structure.

#### **8.2.7 Terms and Conditions – Remote Collocation**

8.2.7.1 Remote Collocation allows CLEC to collocate in a Qwest Remote Premises that is located remotely from a Qwest Wire Center building property. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other Remote Terminals.

8.2.7.2 The terms and conditions for Virtual or Physical Collocation shall apply to Remote Collocation as appropriate to the specific Remote Premises structure and subject to technical feasibility (e.g., Section 8.2.3.11 and Section 8.2.4 would not apply), or if appropriate, Adjacent Collocation as set forth above. Space will be offered in increments appropriate to the Remote Premises structure (i.e., shelf, relay rack, etc.).

#### **8.2.8 Terms and Conditions – Available Inventory**

8.2.8.1 The offering of a Collocation site from the Qwest Available Inventory list shall be limited to the offering of a specified site in Qwest's control to CLEC that either: (i) has a commission-approved Interconnection Agreement covering the specific type of Collocation to be obtained or (ii) is currently in negotiations with Qwest for such an Agreement. CLEC obtaining a Collocation site from the Qwest Available Inventory must not have any undisputed overdue financial obligations (i.e. more than thirty (30) days past due) owed to Qwest. Formally disputed charges will be treated as an exception.

8.2.8.2 The assuming CLEC for all Qwest posted sites will be required to pay a minimum of six (6) months of Space Construction and Floor Space Lease recurring charges should the CLEC terminate its rights of occupancy prior to six (6) months of occupancy.

##### **8.2.8.3 Standard Sites**

8.2.8.3.1 Qwest Postings: Collocation sites available in the Qwest Postings may be partially or fully completed before being returned to Qwest inventory. Both caged and cageless sites will be offered in the Qwest Collocation Postings section. Sites will be offered under the terms and conditions set forth in CLEC's Interconnection Agreement. In its Collocation application for such a site, CLEC may request to add to or complete the Collocation site to the CLEC's specifications. In CLEC Collocation application for such a site, CLEC may also request that Qwest reduce cable terminations. CLEC will be charged for the

removal of such cable terminations.

8.2.8.3.2 All services that were previously connected to the Collocation (e.g. Unbundled Network Elements, CLEC to CLEC connections, administrative lines, Finished Services, Line Splitting and Line Sharing, etc.) will be disconnected before the site is listed on the "Qwest Postings" section of the Collocation Classifieds. Power, Grounding for caged sites and Entrance Facilities are also disconnected prior to a site being posted. Qwest shall inventory all Reusable and Reimbursable Elements and list them in the Qwest Postings. Shared resources including HVAC and racking will not be listed in the Qwest postings. When other Collocation space is not available, Qwest reserves the right to remove Qwest postings from the Available Inventory web site to satisfy CLEC Applications for Collocation, for Qwest space requirement needs, or for CLEC Collocation augments to existing sites. Qwest shall not use the Qwest Postings as a basis to claim exhaust (space, power, terminations, etc.) in any Qwest Premises.

8.2.8.3.3 Qwest will provide CLEC with a feasibility study within ten (10) Calendar Days after receipt of the application. Qwest will provide CLEC with a quote within twenty-five (25) Calendar Days after providing the feasibility study. Price quotes will be honored for thirty (30) Calendar Days from the date the quote is provided and the associated space is reserved during such period, pending CLEC's acceptance of the quoted charges.

8.2.8.3.4 CLEC must pay the initial fifty percent (50%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receiving the quote. If the payment is not received by Qwest within such thirty (30) Calendar Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

#### 8.2.8.4 Special Sites:

8.2.8.4.1 Qwest may elect to offer Collocation sites returned through Chapter 7 bankruptcy or abandonment. These sites "Special Sites" will not be decommissioned and may be offered with Electronic Equipment (Equipment), Equipment Racks, Cages, DC power, Grounding and Terminations. These Special Sites will be posted in the Qwest Available Inventory posting under "Unverified sites with equipment".

8.2.8.4.2 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Calendar Days after receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted nonrecurring charges to Qwest within thirty (30) Calendar Days of receipt of the quote. If Qwest does not receive the payment within such thirty (30) Calendar Day period, the quote will expire and the requested site will be

returned to Qwest inventory. The CLEC will be charged a QPF for work performed up to the point of expiration or non-acceptance of the quote.

8.2.8.4.3 Upon receipt of the full payment for the quoted nonrecurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that the CLEC requires Qwest to install Augments (additional services) to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.

8.2.8.4.4 For Special Sites; IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT QWEST IS SELLING EQUIPMENT THAT IS CLASSIFIED AS "USED" OR "SURPLUS" EQUIPMENT ON AN "AS IS, WHERE IS" BASIS. CLEC UNDERSTANDS AND AGREES THAT ALL EQUIPMENT IS, CONVEYED (I) IN AN "AS IS" "WHERE IS" CONDITION WITH ALL FAULTS, LATENT AND PATENT AND (II) ALL EQUIPMENT IS CONVEYED WITHOUT ANY QWEST WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED BY A PARTICULAR COURSE OF DEALING.

8.2.8.4.4.1 All software and software license agreements for any Equipment conveyed as part of a Special Site shall be the sole responsibility of the assuming CLEC.

8.2.8.4.4.2 CLEC hereby warrants and certifies that its handling, scrap, destruction or other disposition of any Equipment conveyed as part of a Special Site shall conform and comply with the following.

a) All applicable federal, state, county and municipal laws, statutes, regulations, and codes regulating hazardous wastes, materials or substances, including, but not limited to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.); the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.); Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 et seq.); Occupational Safety and Health Act (OSHA) (29 U.S.C. 651 et seq.); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)(42 U.S.C. 9601 et seq.); and any successor acts thereto or the regulations promulgated thereunder and any applicable International laws and regulations;

b) Environmental rules and regulations governing environmental impacts associated with the production and or recovery of precious metals, scrap metals and material processing and or residual material disposition whether hazardous or non-hazardous as defined by governing laws and or applicable laws and are the sole responsibility of the CLEC; and

c)All hazardous waste, hazardous material, hazardous substances

or solid waste manifests relating to the shipping, receiving, disposal or final disposition of the Equipment shall not reference, list or otherwise indicate on the manifest that Qwest is the generator, arranger, transporter, owner or otherwise the party that owns, controls, manages, handles, stores, generates or otherwise uses the Equipment. On any required hazardous waste, hazardous material, hazardous substances or solid waste manifest relating to the shipping, receiving, disposal or final disposition of the Equipment, the CLEC shall be listed as the generator, arranger and owner of the materials.

d) The CLEC shall comply with the applicable Qwest Technical Publications as defined in the CLEC's Interconnection Agreement when removing any equipment from a Special Site.

8.2.8.5 CLEC Posting: Sites listed in the "CLEC Postings" section are eligible for Transfer Of Responsibility to an assuming CLEC. Sites may be offered with or without working circuits. The terms and conditions for the Transfer of Responsibility shall be in accordance with the Transfer of Responsibility Product offering.

## 8.2.9 Terms and Conditions – Joint Testing

8.2.9.1 Qwest will only test between the CLEC Collocation and the ICDF (or the first test point, i.e., the Demarcation Point between Qwest's and CLEC's network) once CLEC equipment is in place. Joint Testing is available for those terminations that are affected on a New/Change/Augment Collocation Application or which are in service for an existing collocation arrangement.

8.2.9.2 For New/Change/Augment collocation applications, Joint Testing will be available from the time of your installation and for a period up to sixty (60) calendar Days past the actual scheduled Ready For Service (RFS) date. Joint Testing will be completed within ninety (90) calendar days of the actual RFS date. CLEC must specify the type of test to be performed with Qwest presence on the Joint Testing at the ICDF Application or the New/Change/Augment Collocation Application form. Joint testing also will be available for existing collocation arrangements if CLEC provides a good faith reason demonstrating that joint testing is necessary. Testing on an existing collocation arrangement will be requested on a Joint Testing at ICDF application.

8.2.9.3 CLEC must provide contact information on the application for Qwest to arrange the Joint Testing date. Collocation application forms are located in the Ordering section of Collocation General Information at: <http://www.qwest.com/wholesale/pcat/collocation.html#order>.

8.2.9.4 Qwest will acknowledge acceptance of your application within ten (10) calendar days of an accepted New/Change/or Augment Collocation Application or Joint Testing at the ICDF Application.

8.2.9.5 CLEC will be required to provide the installation administration (e.g. Method of Procedures (MOPs) and Completion Notifications (CNs)) in a manner that is consistent with other policies for all Qwest Collocation product offerings. Refer to



Qwest's Technical Publication 77350 located in the Product Description section of Collocation General information at: <http://www.qwest.com/wholesale/pcat/collocation.html#prod> for procedures.

8.2.9.6 CLEC will provide test gear for CLEC technicians and Qwest will provide test gear for Qwest's technicians to operate. Qwest employees will assist CLEC in conducting continuity tests on terminations at the ICDF. Qwest employees will not operate CLEC test gear

8.2.9.7 If an error rate of more than 2% is determined to exist on the terminations identified for testing and being tested during the scheduled joint testing period, and the errors are identified as Qwest errors, Qwest will not charge for this Joint Testing ordered by CLEC. However, if there are less than 2% errors found or if the errors are facility errors and CLEC provided the facilities, Qwest will charge for the Joint Testing (i.e. one (1) pair is counted as two (2) terminations and errors are counted as one (1) termination basis).

8.2.9.8 If CLEC wants additional testing not identified on CLEC application, CLEC will need to complete a new Joint Testing at the ICDF Application.

8.2.9.9 If CLEC requests charges be waived because Qwest errors are found during testing, Qwest may request access to CLEC Collocation space to identify if the facility cabling sequence is correct, per applicable standards. CLEC agreement to such access will not be unreasonably withheld and will be given in all circumstances in which a waiver of charges is requested. CLEC may view Qwest facility cabling at the ICDF to identify cable sequence. If the errors are validated as Qwest errors, the charges are waived. Otherwise, Qwest will charge for the test.

8.2.9.10 If errors are found during the Joint Test, Qwest will only provide tools and materials for the repair of Qwest-network faults. If errors are facility errors and CLEC provided the facilities, CLEC will be responsible for the replacement or repair of those facilities.

8.2.9.11 Qwest will only provide tools and materials for the repair of Qwest-network faults.

## **8.2.10 Terms and Conditions – Security**

8.2.10.1 Intentionally Left blank.

8.2.10.2 Intentionally Left blank.

8.2.10.3 CLEC shall have the right to perform equipment modifications within an existing Caged Physical Collocation arrangement without first obtaining permission from Qwest, provided that such modifications can be accomplished in a way as to isolate the Qwest network from any potential harm. Equipment modifications to all other existing Collocations will require a Method of Procedure (MOP) per Qwest Technical Publication 77350.

8.2.10.4 Qwest shall provide to CLEC a list of CLEC employees and the designated Premises to which they have access on a monthly basis to confirm appropriate billing and access information for security purposes.

#### **8.2.11 Terms and Conditions – DC Power Reduction**

8.2.11.1 If a CLEC wishes to reduce its amount of power and will not require it for future use, Qwest will process the request as a standard augment order and not as a DC Power Reduction request.

8.2.11.2 Applications for DC Power Reduction may be submitted only for collocation sites that have been previously accepted by the CLEC. Power reductions to sites under construction or for sites not previously accepted by the CLEC, will follow standard change or augment procedures and rates.

8.2.11.3 Before submitting a power reduction application, CLEC's financial obligations with respect to the collocation site must be current, with the exception of formally disputed charges. CLEC's financial obligations include payment of one hundred percent (100%) of all undisputed non-recurring quoted charges for the collocation site and all applicable monthly recurring charges that are more than thirty (30) days past due.

8.2.11.4 Collocation applications for new, change and augment requests must be submitted to the Collocation Project Management Center (CPMC) on the form provided by Qwest at [www.qwest.co/wholesale/pcat/collocation.html.apform](http://www.qwest.co/wholesale/pcat/collocation.html.apform). The CPMC will notify the CLEC of any deficiencies in the application within ten (10) days of receipt. A nonrefundable Quote Preparation Fee (QPF) in the amount reflected in Exhibit A of this Agreement must be submitted with the application.

8.2.11.5 A walk through will be performed prior to quote preparation to determine the amount of work required to perform the power reduction.

8.2.11.6 When eliminating a secondary feed, CLEC may purchase the option to have the power cable and fuse position held for its future use. CLEC will be required to pay a monthly Power Maintenance Charge until such time as CLEC notifies Qwest that it wishes either to reenergize the feed or to discontinue the option. In instances where a shortage of fuse position is imminent, Qwest reserves the right to notify CLEC of the need to exercise its option or relinquish the fuse position to Qwest. Upon receipt of such notification, CLEC will have the option of energizing the secondary feed to at least 20 amps or returning the fuse position to Qwest within thirty (30) days of receipt of the notification.

8.2.11.7 CLEC assumes all responsibility for outages and/or impacts to CLEC-provided service and equipment due to the reduction in DC Power. CLEC shall be notified at least 48 hours in advance of the time and date of the power reduction and given the opportunity to observe the actual reduction procedure from within the Central Office spaces to which CLEC normally has access.

8.2.11.8 Restoration of the desired power is contingent upon desired power and fuse position availability.

## 8.3 Rate Elements

Rate elements for Collocation are included in Exhibit A.

### 8.3.1 Rate Elements - All Collocation

8.3.1.1 Qwest will recover Collocation costs through both recurring and nonrecurring charges. The charges are determined by the scope of work to be performed based on the information provided by CLEC on the Collocation Order Form. A quote is then developed by Qwest for the work to be performed.

8.3.1.2 The following elements as specified in Exhibit A of this Agreement are used to develop a price quote in support of Collocation:

8.3.1.3 Quote Preparation Fee. A non-refundable charge for the work required to verify space and develop a price quote for the total costs to CLEC for its Collocation request. Qwest will assess a QPF when it delivers a Collocation quote to CLEC. Once the quote is delivered, the QPF becomes a non-refundable charge for the work required to verify the space and develop a price quote for the total costs to CLEC for its Collocation request. The QPF shall also apply to all new Collocations and Collocation Cabling Augments. Upon completion of a new Caged or Cageless Collocation, the QPF shall be credited against the final non-recurring charges for the Collocation.

8.3.1.3.1 A Collocation Cable Augment QPF is specified in Exhibit A. A Collocation Cable Augment is an augment to existing termination cables which are the transmission facilities purchased by CLEC for the purpose of accessing UNEs within the collocated Central Office premises. In order to qualify as a cable augment, the following criteria must be satisfied:

- Augment terminations must originate and terminate in the same Central Office.
- Augment terminations must originate from the same collocation site location as the existing terminations.
- Augment terminations must terminate on the same frame as existing terminations.
- Augment terminations must be of the same transmission facility type as existing terminations (i.e., copper or fiber).
- Augment terminations must be of the same signal level as existing terminations (DS0, DS1, DS3, fiber).

The Collocation Cable Augment QPF is a non-recurring rate element and separate from other non-recurring costs associated with the quote. Because this rate element is not part of a space construction fee, it will not be credited to the other non-recurring costs upon acceptance of the quote. The Collocation Cable Augment QPF rate element shall be the only rate element under which Qwest will recover non-recurring costs associated with the development of the Collocation

Cable Augment quote.

8.3.1.3.2 Intentionally Left blank.

8.3.1.3.3 Intentionally Left blank.

8.3.1.3.4 Where CLEC disputes the accuracy or validity of a quote provided by Qwest, and Qwest agrees that the quote was incorrect, Qwest shall revise the quote and promptly provide it to CLEC.

8.3.1.3.5 Where CLEC disputes in good faith the accuracy or validity of a quote provided by Qwest, CLEC shall not be required to pay any charges incurred by Qwest prior to delivery of the quote if the CLEC determines that it will not accept the quote.

8.3.1.4 Collocation Entrance Facility Charge. Provides for the fiber optic cable (in increments of 12 fibers) from the C-POI utilizing Qwest owned, conventional single mode type of fiber optic cable to the collocated equipment (for Virtual Collocation) or to the leased space (for Caged or Cageless Physical Collocation). The Collocation entrance facility includes manhole, conduit/innerduct, placement of conduit/innerduct, fiber cable, fiber placement, splice case, a splice frame, fiber distribution panel, and relay rack. Charges apply per fiber pair. Express Fiber Entrance Facility does not include fiber cable, splice case, a splice frame or fiber distribution panel. Microwave Entrance Facility charges are addressed in 8.3.1.17.

8.3.1.5 Cable Splicing Charge. Represents the labor and equipment to perform a subsequent splice to CLEC provided fiber optic cable after the initial installation splice. Includes per-setup and per-fiber-spliced rate elements.

8.3.1.6 -48 Volt DC Power Usage Charge. Provides -48 volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Usage Charge contains two components: (i) the capacity of the power plant available for CLEC's use, and (ii) the DC power used. The -48 Volt DC Power Usage Charge is specified in Exhibit A and applies to the quantity of -48 volt capacity specified by CLEC in its order. The minimum initial DC power order is twenty (20) amps. CLEC may, thereafter, augment or reduce DC power in increments of one (1) amp beyond the initial twenty (20) amp minimum, but CLEC may not reduce DC power below the twenty (20) amp minimum.

8.3.1.7 AC Power Feed. Recovers the cost of providing for the engineering and installation of wire, conduit and support, breakers and miscellaneous electrical equipment necessary to provide the AC power, with generator backup, to CLEC's space. The AC Power feed is optional. The AC Power Feed is available with single or triple phase options. The AC Power Feed is rated on a per foot and per ampere basis.

8.3.1.8 Inspector Labor Charge. Provides for Qwest qualified personnel, acting as an inspector, when CLEC requires access to the C-POI after the initial installation. A call-out of an inspector after business hours is subject to a minimum charge of three hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' Qwest employee (or contract employee) is required to go 'on-shift' on behalf of CLEC.

8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2 (EICT). Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

8.3.1.10 Interconnection Tie Pairs (ITP) are described in the UNE Section, and apply for each Unbundled Network Element, ancillary service or Interconnection service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element, ancillary service or Interconnection service and the Demarcation Point. Qwest will charge CLEC for ITPs pursuant to Exhibit A.

8.3.1.11 Collocation Terminations. Terminations are purchased by CLEC for the purpose of accessing Unbundled Network Elements. These terminations may be requested in Shared Access and Direct Connection Configurations.

8.3.1.11.1 Shared Access

8.3.1.11.1.1 In a Shared Access configuration, there are multiple frames that could be designated as an ICDF or appropriate Demarcation Point including, but not limited to, the following:

- a) Existing Interconnection Distributing Frame (ICDF)
- b) Existing DSX Panels for DS1 and DS3 services
- c) New Interconnection Distributing Frame
- d) Existing Toll Frame
- e) Fiber Distribution Panel
- f) Existing Intermediate Frame

8.3.1.11.1.2 The ICDF is the test access point. It would not be uncommon to find multiple service providers, including Qwest, on the ICDF at any one time. This element includes Qwest's provided termination blocks, installation labor between CLEC collocated equipment and the appropriate cross connect device. Cabling is also required and may be provided by CLEC or at their request, Qwest will provide cabling at an additional charge. When Qwest provides the cabling, Collocation Block Termination rates will apply as contained in Exhibit A of this Agreement. When CLEC provides the cabling, Collocation Termination rates, on a per termination basis, will apply as contained in Exhibit A of this Agreement. When CLEC provides and installs the tie cables, blocks and terminations on the ICDF, no Collocation Termination rates will apply.

8.3.1.11.2 Direct Connection

8.3.1.11.2.1 Direct Connection provides an uninterrupted path from the Collocation space to an existing frame. This option will guarantee that there will not be an ICDF. The connection will be designed from the Collocation space to the same frame that Qwest uses to connect to that specific service. For example, if CLEC wants to connect directly from their Collocation space to a 911 router, the infrastructure for the 911 trunks will terminate in a DS1 bay location with the 911-router circuits. There are several options for the location of the Demarcation Point. CLEC will select their desired option via the supplemental Direct Connection (DC-POT) With Collocation Form DC050900. If CLEC chooses a demarcation inside the Collocation space, the collocater should order and install the termination equipment itself. Demarcation equipment must be noted on the order form so that a CLLI code and unique tie cable assignments can be generated for systems flow through. If CLEC chooses a demarcation outside its Collocation space, Qwest will maintain and inventory this device. Direct terminations may be ordered where frame space is available. If frame space is exhausted the terminations may need to be made at another frame. Upon completion of the pre-Provisioning of the Direct Connection, CLEC will receive an Alternate Point of Termination (APOT) form so that they may order Finished Services and UNEs. CLEC will be responsible for augmenting terminations as required. The Direct Connection APOT information must be provided on the ASR or LSR to insure that the services are designed to the dedicated path.

8.3.1.11.2.2 CLEC's termination point will require a CLLI code (e.g., Frame Number) and the dedicated tie pairs will require a unique name to enable automatic assignment through TIRKS™ and SWITCH™ via Carrier Facilities Address (CFA) methods.

8.3.1.11.2.3 If CLEC wishes to arrange terminations on a 2-wire POTS level cross-connect device of the modular type, i.e. COSMIC™ Hardware, standard-engineering principles will apply. Provisioning intervals and costs will be customized and determined on an Individual Case Basis (ICB). A five (5) year forecast including terminations per quantities will be required. MELD™ runs will be required for the initial COSMIC™ plan and each subsequent block addition. To minimize CLEC's cost, to the extent feasible, Qwest shall consolidate CLEC's requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest, Minimum installation requires at least one (1) block for every two (2) outside plant modules. A one half (½) shelf of block capacity must be reserved for future block space.

8.3.1.11.2.4 Requests for terminations at a DSO, DS1, DS3 and optical level (non-POTS) may also be made directly to the respective frame or panel (i.e. toll frame, DSX, FDP, etc.). Direct Connections to these frames do not require MELD™ runs and short jumper engineering principals, as with the COSMIC™ frame. However these connections will require coordination between Qwest and CLEC to ensure that the cable is

terminated in an existing frame with the service that CLEC is wishing to connect with. Direct Connection is ordered via the supplemental Collocation order form, Direct Connection (DC-POT) With Collocation Form DC050900. Timing, pricing and feasibility will be determined on the basis of a specific, in-depth building analysis. Direct Connections are available where available frame space permits. If frame space is exhausted, terminations may need to be made at another frame. Space availability will be determined during the feasibility request phase of the order. Rates for Direct Connection Terminations will be on an ICB basis using rates defined in Exhibit A.

8.3.1.11.3 Terminations must be purchased in the following increments: DS0 in blocks of 100; DS1 in increments of one (1); and DS3 in increments of one (1) coaxial cable or fiber pair.

8.3.1.12 Security Charge. This charge applies to the keys/card and card readers, required for CLEC access to the Qwest Premises for the purpose of Collocation. Charges are assessed per CLEC employee, per card, per Premises on a monthly basis.

8.3.1.13 Composite Clock/Central Office Synchronization. Recovers the cost of providing composite clock and/or DS1 synchronization signals traceable to a stratum one source. CLEC must determine the synchronization requirements for CLEC's equipment and notify Qwest of these requirements when ordering the clock signals. Central Office Synchronization is required for Virtual Collocation involving digital services or connections. Synchronization may be required for analog services. Central Office Synchronization is available where Qwest Central Offices are equipped with Building Integrated Timing Supply (BITS). The rate is applied on a per Port basis in accordance with Exhibit A.

8.3.1.14 -48 Volt DC Power Cable Charge. Provides for the transmission of -48 volt DC power to the collocated equipment and is fused at one hundred twenty-five percent (125%) of request. It includes engineering, furnishing and installing the main distribution bay power breaker, associated power cable, cable rack and local power bay to the closest power distribution bay. It also includes the power cable (feeders) A and B from the local power distribution bay to the leased physical space (for Caged or Cageless Physical Collocation) or to the collocated equipment (for Virtual Collocation). It is charged per foot, per A and B feeder.

8.3.1.15 Space Availability Report Charge – Recovers the cost of preparing a Space Availability Report in accordance with Section 8.2.1.9.1.

8.3.1.16 CLEC-to-CLEC Connection Charge. Recovers the cost of order processing, design and engineering. Additional charges will be assessed for Virtual Collocation connections and cable holes, if applicable. There will be recurring charges for cable racking.

8.3.1.17 Microwave Entrance Facility - The charges for Microwave Entrance Facility include the recurring and nonrecurring charges associated with the preliminary rooftop engineering and survey analysis, Premises structural analysis and line-of-sight feasibility, if performed by Qwest; space rental for the rooftop and existing antenna support structure, cable racking, cable, building penetration for cable entry, and other

work as required.

### 8.3.2 Rate Elements - Virtual Collocation

The following rate elements, as specified in Exhibit A, apply uniquely to Virtual Collocation.

8.3.2.1 Maintenance Labor. Provides for the labor necessary for repair of out of service and/or service-affecting conditions and preventative maintenance of CLEC virtually collocated equipment. CLEC is responsible for ordering maintenance spares. Qwest will perform maintenance and/or repair work upon receipt of the replacement maintenance spare and/or equipment from CLEC. A call-out of a maintenance technician after business hours is subject to a minimum charge of three (3) hours.

8.3.2.2 Training Labor. Provides for the training of Qwest personnel on a metropolitan service area basis provided by the vendor of CLEC's virtually collocated equipment when that equipment is different from Qwest-provided equipment. Qwest will require three (3) Qwest employees to be trained per metropolitan service area in which CLEC's virtually collocated equipment is located. If, by an act of Qwest, trained employees are relocated, retired, or are no longer available, Qwest will not require CLEC to provide training for additional Qwest employees for the same virtually collocated equipment in the same metropolitan area. Where more than one (1) CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs so selecting.

8.3.2.3 Equipment Bay. Provides mounting space for CLEC virtually collocated equipment. Each bay includes the seven (7) foot bay, its installation, and all necessary environmental supports. Mounting space on the bay, including space for the fuse panel and air gaps necessary for heat dissipation is limited to 78 inches. The monthly rate is applied per shelf. CLEC may request use of alternate bay heights of 9 foot and 11 foot 6 inches, which will be considered on an Individual Case Basis. No Equipment Bay Charge is assessed if CLEC provides its own equipment bay.

8.3.2.4 Engineering Labor. Provides the planning and engineering of CLEC virtually collocated equipment at the time of installation, change or removal.

8.3.2.5 Installation Labor. Provides for the installation, change or removal of CLEC virtually collocated equipment.

8.3.2.6 Floor Space Lease. Required for Virtual Collocation only in the instance where CLEC provides its own equipment bay. This rate element provides the monthly lease for the space occupied by the CLEC-provided equipment bay, including property taxes and base operating cost without –48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or –48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises areas surrounding the CLEC-provided equipment bay and general repair and maintenance. The Floor Space Lease includes required aisle



space on each side of the CLEC-provided equipment bay.

### **8.3.3 Rate Elements - Physical Collocation**

8.3.3.1 Space Construction and Site Preparation. Includes the material and labor to construct and prepare the space, including all support structure, cable racking and lighting required to set up the space. It also includes air conditioning (to support CLEC loads specified), lighting (not to exceed 2 watts per square foot), and convenience outlets (3 per Caged or Cageless Collocation or number required by building code) and the cost associated with space engineering. If a new line-up is established for Cageless Collocation, an AC power outlet will be provided at every other bay in the line-up. Cageless bays placed in existing line-ups will use the existing outlets. For Caged Collocation, it includes a nine foot high cage enclosure. CLEC may choose from Qwest approved contractors or may use another vendor of CLEC's own choosing, subject to Qwest's approval, which may not be unreasonably withheld, to construct the space, including the cage in the case of Caged Collocation, in accordance with NEBS Level 1 safety requirements. Pricing for the Space Construction and Site Preparation is described in Exhibit A. In the case of Shared Collocation, Qwest may not increase the cost of site preparation or nonrecurring charges above the TELRIC cost for Provisioning such a cage of similar dimensions and material to a single collocating Party, and Qwest must prorate the charge for site conditioning and preparation by determining the total charge for site preparation and allocating that charge to CLEC based on the percentage of the total space used by CLEC. Qwest must in all cases of shared space Collocation allocate space preparation, conditioning, security measures and other Collocation charges on a pro-rated basis to ensure that the charges paid by CLEC as a percentage of the total overall space preparation and conditioning expenses do not exceed the percentage of the total Collocation space used by CLEC.

8.3.3.2 Floor Space Lease. Provides the monthly lease for the leased physical space, property taxes and base operating cost without -48 volt DC power. Includes convenience 110 AC, 15 amp electrical outlets provided in accordance with local codes and may not be used to power transmission equipment or -48 volt DC power generating equipment. Also includes maintenance for the leased space; provides for the preventative maintenance (climate controls, filters, fire and life systems and alarms, mechanical systems, standard HVAC); a pro-rata share of biweekly housekeeping services (sweeping, spot cleaning, trash removal) of Qwest Premises common areas surrounding the leased physical space and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of the cage enclosure, as applicable.

8.3.3.3 Intentionally Left Blank.

8.3.3.4 Collocation Grounding Charge. Used to connect the Premises common ground to CLEC equipment. Recurring and nonrecurring charges are assessed per foot to CLEC's equipment.

### **8.3.4 Rate Elements - ICDF Collocation**

8.3.4.1 The charges for ICDF Collocation are the nonrecurring and recurring charges associated with the Unbundled Network Elements or ancillary services ordered by CLEC, the cost of extending the Unbundled Network Elements or ancillary services to

the Demarcation Point, which are recovered through the ITP charges described in the UNE Section, and the Security charge, described in this Section.

#### **8.3.5 Rate Elements – Adjacent Collocation**

8.3.5.1 The charges for Adjacent Collocation will be developed on an Individual Case Basis, except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined, depending on the specific needs of CLEC and the unique nature of the available adjacent space (e.g., existing structure or new structure to be constructed).

#### **8.3.6 Rate Elements – Remote Collocation and Adjacent Remote Collocation**

8.3.6.1 The charges for Remote Collocation will be developed on an Individual Case Basis except where the Commission finds that standard pricing elements can be reasonably identified and their costs determined.

#### **8.3.7 Rate Elements – CLEC-to-CLEC Connections**

8.3.7.1 The charges for CLEC-to-CLEC Connections are addressed in Section 8.3.1.16.

#### **8.3.8 Rate Elements – Collocation Cancellation**

8.3.8.1 Qwest will not charge for the cancellation service except as specifically provided in the terms and conditions for Collocation Cancellation.

#### **8.3.9 Rate Elements – Collocation Decommissioning**

8.3.9.1 Qwest will not charge for the decommissioning service except as specifically provided in the terms and conditions for Collocation Decommissioning unless equipment has been abandoned or the Collocation space has not been returned to turnover condition.

8.3.9.2 Miscellaneous labor hourly charges as defined in the attached Exhibit A will apply if Qwest is required to remove equipment or to restore the collocation space to turnover condition.

8.3.9.3 Additional dispatch charges, will apply for unmanned offices, as defined in the attached Exhibit A.

#### **8.3.10 Rate Elements – Transfer of Responsibility**

8.3.10.1 Vacating CLEC will not incur charges for the transfer of the Collocation site.

8.3.10.2 Assuming CLEC's quote will reflect the following nonrecurring charges

associated with the transfer of the Collocation site: Assessment Fee, payable regardless of whether the quote is accepted, and Network Systems Administrative Fee.

8.3.10.3 Nonrecurring charge for processing Interconnection circuits.

### 8.3.11 Rate Elements – Available Inventory

8.3.11.1 Pricing for sites listed within the Qwest Available Inventory list will be provided on a site-specific basis. Pricing shall be in accordance with the Interconnection Agreement of the assuming CLEC. Vacating CLEC's may receive a potential refund from sale of available/discounted sites based on outstanding Nonrecurring charges, amounts for reimbursable elements and transfer fees.

8.3.11.2 The following items are charged to a CLEC purchasing a "Standard site" from the Qwest Available Inventory List. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before work begins.

8.3.11.2.1 Quote Preparation Fee (QPF) - Found in CLEC's existing Interconnection Agreement for a each specific type of Collocation site.

8.3.11.2.2 Reusable Elements are those Qwest inventoried components used to provision the Collocation site. The quote will be for all components used to install the Collocation space. These elements include Qwest inventoried components (i.e. cage, bays, HVAC, cable racking) to provision the original Collocation site.

8.3.11.2.2.1 Nonrecurring Collocation Rate Elements that are reused, will be available at a 50% discount to an assuming CLEC.

8.3.11.2.3 Reimbursable Elements are those which are not subject to a discount to the assuming CLEC. This includes any reusable termination cabling that is part of the available site. Reimbursable Elements considered for a potential refund are, Digital Signal Level 0 (DS0) termination cabling, Level 1 (DS1) termination cabling, Level 3 (DS3) termination cabling, and fiber terminations (excluding entrance that run from vault directly to Collocation site, i.e. Express Fiber Entrances).

8.3.11.3 Special Site Rates: The following items are charged to an assuming CLEC for a Special Site from the Qwest Postings. Charges will be provided to a CLEC via a quote that requires the CLEC's acceptance before Qwest begins work.

8.3.11.3.1 Site Survey Fee: A non-refundable site survey fee for a formal site survey visit with the CLEC per Exhibit A. Payment is to be submitted in conjunction with the Collocation Application for a Special Site.

8.3.11.3.2 Quote Preparation Fee (QPF). The QPF for Special Sites will be a flat rate fee per Exhibit A. If the assuming CLEC requires Augments (additional services) to the existing site the QPF will revert to the rate defined in the CLEC's Interconnection Agreement.

8.3.11.3.3 Non recurring Collocation Rate Elements: Include all Reusable elements defined above, DC Power, grounding and terminations. Special sites will be offered at a flat 50% discount to an assuming CLEC based on the rates in its current Interconnection Agreement. Augments (additional services) or changes to the sites will not be discounted and will be charged at the rates as defined in the CLEC's Exhibit A of their Interconnect Agreement or Exhibit A of this document, payable in full prior to commencement of work.

8.3.11.3.4 Network Assessment Fee for transfer of existing circuits to the assuming CLEC per Exhibit A.

8.3.11.3.5 Any Equipment contained in the site will be conveyed at a \$0.00 charge.

8.3.11.4 Recurring charges for all Products and Services will be charged at rates listed in the assuming CLEC's Exhibit A of their Interconnection Agreement without a discount.

### **8.3.12 Rate Elements – Joint Testing**

8.3.12.1 The Joint Testing Nonrecurring Charge is specified in Exhibit A of this Agreement. The rate is a minimum of one (1) hour per Joint Testing request at the Virtual Collocation maintenance rate and a per thirty minute charge at the same rate for any time exceeding the first hour. Qwest identified trouble during the ninety (90) calendar Day period for New/Change/Augment collocations, following the acceptance of the collocation site, will be corrected by Qwest at no additional charge. Qwest identified trouble for existing collocation sites will also be corrected at no additional charge.

8.3.12.2 Qwest will not charge a Quote Preparation Fee (QPF) for Joint Testing.

### **8.3.13 Rate Elements – DC Power Reduction**

8.3.13.1 Collocation charges will be based upon the information provided to Qwest by CLEC on the Collocation Application Form. Below is an example of additional charges that are unique to a Power Reduction Request and will be provided to CLEC via a quote:

8.3.13.1.1 Based on this evaluation of work provided in the quote, the rates provided in Exhibit A to this Amendment will apply. One QPF per application/per collocation site will be charged. When multiple feeds at the same collocation space are reduced or eliminated, CLEC will pay one QPF. Other nonrecurring and recurring charges may apply as reflected in CLEC's Interconnection Agreement. If the quote contemplates the performance of work not included in rates identified in Exhibit A of this Amendment, such charges shall be identified in the quote.

8.3.13.1.2 Qwest will provide CLEC a quote for additional nonrecurring charges associated with the Power Reduction Procedure based upon the rates provided in Exhibit A. All quoted nonrecurring charges must be paid within thirty

(30) Days from the quote. Such payment constitutes CLEC's quote acceptance and authorizes Qwest to perform the work to effect the requested power reduction. All rates and charges identified in the quote will be based on those rates in the Agreement and Exhibit A of this Amendment. If appropriate rates and charges are not available from those sources, Qwest will use tariffs or other rate sources as a basis for preparing the quote.

8.3.13.1.3 Billing to CLEC for initial power value at the collocation site will be modified to reflect the reduced amount upon receipt of payment of the quoted charges and will be made effective back to the date of acceptance of the Power Reduction Application by the CPMC.

8.3.13.1.4 Recurring billing for the Power Maintenance Charge will terminate on the day CLEC energizes the feed or returns the fuse position to Qwest.

#### 8.3.13.2 Nonrecurring Charges

8.3.13.2.1 QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the Power Reduction request. It covers the project, order and support management associated with the administrative functions of processing the request.

8.3.13.2.2 Power Reduction Charge: Includes costs associated with reducing the fuse/breaker size. Rates are categorized in this manner based upon the work involved and power distribution point (e.g., BDFB or power board) and are set forth in Exhibit A of CLEC's Interconnection Agreement. Where additional work is needed, such as rewiring the power lead at the power source (or some cases may require relocation of the feed), rates will be calculated on an Individual Case Basis (ICB) basis. These rates will be provided to CLEC on the quote prior to work beginning.

8.3.13.2.3 Power Restoration Charge (assessed if power is restored): ICB Charge associated with restoring the power cable to the power source and is contingent upon whether the desired power and fuse position is available. Qwest will evaluate work required to perform the Power Restoration request and provide CLEC a quote utilizing standard power element charges (for example, DC power usage, labor, and cabling charges) included in Exhibit A of CLEC's Interconnection Agreement.

#### 8.3.13.3 Recurring Charge

8.3.13.3.1 Power Maintenance Charge: Monthly recurring charge associated with option to hold the power infrastructure from a secondary feed in place for potential CLEC requests.

### 8.4 Ordering

#### 8.4.1 Ordering - All Collocation

8.4.1.1 CLEC must complete the requirements in the Implementation Schedule Section of this Agreement before submitting a Collocation Application Form to Qwest.

8.4.1.2 Any material changes, modifications or additional engineering (Material Changes) requested by CLEC, subsequent to its original Collocation order, as to the type and quantity of equipment or other aspects of the original Collocation order, must be submitted with a revised Collocation Application. For purposes of this section, Material Changes are changes that would significantly impair Qwest's ability to provision the requested Collocation within the applicable intervals if the changes are provisioned with the original Collocation order and would require Qwest to incur financial penalties under the terms of this Agreement or other Applicable Law. Qwest shall determine the additional time required to comply with CLEC's request for Material Changes (Additional Time), and CLEC shall have the option of (a) having the request for Material Changes implemented with the original Collocation order (within the original Provisioning intervals) as extended by the Additional Time; or (b) having Qwest process and provision the request as a subsequent construction activity or augmentation to the original Collocation order. Any nonmaterial changes, modifications, or additional engineering requested by CLEC, subsequent to its original Collocation order, may be submitted with a revised Collocation Application or otherwise communicated to Qwest and shall be implemented with the original Collocation order within the original applicable intervals.

8.4.1.3 There are three (3) primary steps in the ordering of Collocation – 1) Forecasting, 2) Application, and 3) Acceptance of Quote.

8.4.1.4 CLEC shall submit an annual forecast, updated at the end of each quarter, of its future Collocation requirements. The quarterly forecast shall be reviewed by CLEC and the Qwest account team. CLEC forecast shall be considered accurate for purposes of Collocation intervals if the subsequent Collocation Application correctly identifies a) and e) below, and b) and c) below are within twenty percent (20%) of the forecast. If at the time the Application is made the forecasted type of Collocation is not available, CLEC may specify a different type of Collocation without affecting the Collocation intervals. The forecast shall include, for each Qwest premises, the following:

- a) Identification of the Qwest Premises;
- b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;
- c) Power requirements;
- d) Heat Dissipation (optional);
- e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, ICDF, Virtual, etc.);
- f) Intentionally Left Blank.
- g) Entrance Facility Type (e.g., Express Fiber, Private Line);
- h) Type and Quantity of Terminations (optional); and
- i) Month or Quarter during or after which CLEC expects to submit its Collocation Application.

8.4.1.4.1 The following terms shall apply to the forecasting process:

- a) CLEC forecasts shall be provided as detailed in Section 8.4.1.4;
- b) CLEC forecasts shall be confidential information and Qwest may not distribute, disclose or reveal, in any form, CLEC forecasts other than as allowed and described in Sections 5.16.9.1 and 5.16.9.2.
- c) Reserved for Future Use.
- d) Reserved for Future Use.

8.4.1.5 CLEC shall submit a Collocation Application to order Collocation at a particular Qwest Premises. A Collocation Application shall be considered complete, if it contains:

- a) Identification of the Qwest Premises;
- b) Floor space requirements, including the number of bays for a Cageless Collocation arrangement;
- c) Power requirements;
- d) Heat Dissipation;
- e) Type of Collocation (e.g., Caged Physical, Cageless Physical, Shared, Virtual, etc.);
- f) Collocated equipment and technical equipment specifications (Manufacturer Make, Model No., Functionality i.e., Cross Connect, DLC, DSLAM, Transmission, Switch, etc., Physical Dimensions, Quantity). (NOTE: Packet or circuit switching equipment requires, in writing and attached to the Application, how this equipment is necessary for access to UNEs or Interconnection. High level equipment interface or connectivity schematic for equipment that is not on the approved equipment list or has not been used by CLEC for a similar purpose before, must also accompany this Application. CLEC using approved equipment found at [www.qwest.com/wholesale/pcat/collocation.html](http://www.qwest.com/wholesale/pcat/collocation.html) need not comply with this provision);
- g) Entrance Facility Type;
- h) Type and Quantity of Terminations;
- i) If desired, an alternate form of Collocation if first choice is not available; and
- j) Billing Contact.

8.4.1.5.1 Parties will work cooperatively to ensure the accuracy of the Collocation Application. If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days after receipt of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies

in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.1.6 Acceptance – After receipt of a Collocation Quote Form from Qwest, CLEC shall formally accept the quote in order for Qwest to continue the processing of the Collocation Application. A Collocation Acceptance shall be considered complete, if it contains:

- a) Signed Notification of Acceptance; and
- b) Payment of fifty percent (50%) of quoted charges.

8.4.1.6.1 CLEC shall have the option of viewing the available space prior to quote acceptance, at the rate set forth in Exhibit A.

8.4.1.7 Collocation Space Reservation – allows CLEC to reserve space and identify, to the extent available, infrastructure incidental to that space such as power, HVAC, in a Qwest Premises for up to one (1) year for transmission equipment (ATM, Packet Switching, DSLAM), three (3) years for circuit switching equipment, and five (5) years for power equipment. CLEC may reserve space in a particular Qwest Premises through the Collocation Space Reservation Application Form. Requests for contiguous space will be honored, if available.

8.4.1.7.1 Collocation Space Reservation Application – Upon receipt of the Collocation Space Reservation Application Form, Qwest will provide space feasibility within ten (10) calendar Days.

8.4.1.7.2 Collocation Space Reservation Quotation – If space is available, Qwest will provide a specific price quote based on the requested Collocation requirements described on the Collocation Space Reservation Application Form. The quote and a Billing invoice for twenty-five percent (25%) payment of nonrecurring charges will be sent to CLEC within twenty-five (25) calendar Days from the Collocation Space Reservation Application receipt.

8.4.1.7.2.1 Collocation Space Reservation Acceptance. CLEC must electronically submit Acceptance or non-Acceptance of the quote within seven (7) calendar Days of receipt of the quotation. If CLEC submits the Acceptance between eight (8) and thirty (30) calendar Days of receipt of the quotation, Qwest will honor the reservation upon receipt of the payment only if Qwest does not receive a competing request for the same space from another CLEC. Qwest will not honor reservations if CLEC submits the Acceptance more than thirty (30) calendar Days after receipt of the quotation.

8.4.1.7.3 Upon receipt of the twenty-five percent (25%) payment, Qwest will reserve the space on behalf of CLEC in accordance with the Application and take the necessary steps to ensure the availability of power, HVAC and other components reflected on the application for reservation. Qwest will hold the reservation for the applicable reservation period after the twenty-five percent (25%) payment. This payment will be applied to the subsequent Collocation Application.



8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. Upon notification of the cancellation, Qwest will refund a prorated portion of the twenty-five percent (25%) payment as follows:

- a) Cancellation notification within ninety (90) calendar Days from receipt of wire transfer, seventy five percent (75%) of the initial down payment will be returned to CLEC.
- b) Cancellation notification within ninety-one (91) and one hundred and eighty (180) calendar Days from receipt of wire transfer, fifty percent (50%) of the initial down payment will be returned to CLEC.
- c) Cancellation notification within one hundred and eighty-one (181) and two hundred and seventy (270) calendar Days from receipt of wire transfer, twenty five percent (25%) of the initial down payment will be returned to CLEC.
- d) Cancellation notification after two hundred and seventy (270) calendar Days from receipt of wire transfer, zero percent (0%) of the initial down payment will be returned to CLEC.

#### **8.4.1.8 Collocation Space Option**

8.4.1.8.1 CLEC, Qwest, and Qwest Affiliates may Option space in Qwest Wire Center Premises in accordance with the terms of this Section 8.4.1.8 for the following equipment and time periods:

- a) Transmission equipment – one (1) year
- b) Circuit switching equipment – three (3) years
- c) Power plants –five (5) years

8.4.1.8.2 Optioned space is offered to CLECs for Caged, Cageless, and Virtual Collocation. To promote fairness and prevent warehousing, the following limits apply:

- a) The Party requesting the Option may specify the amount of space to be Optioned but not a specific location within the Wire Center, unless CLEC requests an Option for bay space adjacent to existing cageless lineups. CLEC may also request space be contiguous to its existing Collocation space.
- b) A requesting CLEC may Option one (1) Collocation space per Wire Center.
- c) The maximum amount of space per Wire Center to be Optioned is:
  - 200 square feet for Caged Collocation
  - 4 bays for Cageless and Virtual Collocation

8.4.1.8.3 The Collocation Space Option Application form will be processed upon receipt of a properly completed request. Such form shall be considered properly completed if it contains identifying information of CLEC, the applicable Qwest Premises, the amount of Collocation space sought, the type of Collocation (Caged, Cageless, Virtual) and the type of equipment (from the categories identified in Section 8.4.1.8.1) for which the option is being sought. CLEC must have met all past and present undisputed financial obligations to Qwest. Upon receipt of the Collocation Space Option Application form, Qwest will confirm in writing, within ten (10) calendar Days, the availability of, and price quote (the "Option Fee") for the Optioned space. If space is not available, Qwest will deny the request.

8.4.1.8.4 CLEC must electronically submit Acceptance with full payment of the nonrecurring portion of the Option Fee, or acknowledge non-Acceptance of the quoted Option Fee, within seven (7) calendar Days of receipt of the quotation. When Qwest takes an Option on space for itself, Qwest shall impute an amount equal to the Option Fee to the appropriate operations for which the Optioned Space applies. The Option quote expires seven (7) calendar Days after delivery to CLEC.

8.4.1.8.5 Upon receipt of Acceptance and full payment of the nonrecurring portion of the Option Fee, Qwest will Option the space on behalf of CLEC including the contiguous space requests if available (or itself if appropriate) and the Option time frame will begin. The prioritization of Optioning will be based upon the date and time of the Acceptance. The earlier in time an Acceptance is received by Qwest, the higher in priority is such Option. The Option is limited to space only and does not include other elements required to provision the Collocation.

8.4.1.8.6 In order for an Option request to avoid expiration, CLEC must:

- a) Submit a Collocation Application during the Option time frame; or
- b) The Option may be renewed if a Collocation Space Option Application is received at least ten (10) calendar Days prior to the expiration of the term of the existing Option. The priority of a renewed Option is determined by the date CLEC accepts the quote from Qwest on CLEC's renewal application.

8.4.1.8.7 First Right of Refusal – If Qwest receives a valid Collocation Application (CLEC A is the requesting Party) for a Qwest Wire Center in which all available space has been occupied or Optioned, the following provisions for First Right of Refusal will apply:

8.4.1.8.7.1 All Qwest out of space reporting requirements apply to the Collocation Application (Sections 8.2.1.11 and 8.2.1.12). In addition, Qwest will provide CLEC A with Option space information (e.g., Caged and Cageless Optioned space) that may fulfill the requirements of CLEC A's Collocation Application. At CLEC A's request, Qwest will initiate the Option Enforcement Notice process by notifying the Option Party or Parties with the most recent space Option(s) that meets the requirements

of CLEC A's Collocation Application.

8.4.1.8.7.2 The Option Enforcement Notice serves as notification to the Option Party that Qwest is in possession of a valid Collocation Application, and calls for the Option Party to exercise their Right of First Refusal, or relinquish their space Option. The Option Party may exercise its Right of First Refusal by submitting either a Collocation Application as set forth in Section 8.4.1.5, or by submitting the Collocation Space Reservation Application set forth in Section 8.4.1.7, within ten (10) calendar Days of receipt of the Option Enforcement Notice. This process continues for all Optioned space until all Optioned space is exercised or Optioned space is relinquished (affirmatively by CLEC or upon expiration of the notice period, whichever is earlier) to fulfill the Collocation Application. Once Optioned space has been relinquished for use to fulfill the Collocation Application, the standard ordering terms and conditions for Collocation shall apply.

8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLEC require the use of CLEC's contiguous space. Upon notification, CLEC will have ten (10) calendar days to indicate its intent to submit a Collocation Application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.

8.4.1.8.7.4 The rate elements for the Collocation Space Option are comprised of the following:

- a) Space Option Administration Fee is a nonrecurring fee for all Collocation Space Option requests and covers the processing of application, feasibility, common space engineering, records management, and administration of the First Right of Refusal process.
- b) Space Option Fee is a monthly recurring fee that will be charged based upon the amount of space being optioned, at two dollars (\$2.00) per square foot per month.

8.4.1.8.8 In the event that the Option Party proceeds with a Collocation Application for optioned space, all payments made pursuant to Section 8.4.1.8.7.4(b) above shall be applied to such Application.

8.4.1.9 Should Qwest receive an extraordinary number of complex Collocation applications within a limited time frame, Qwest shall use its best efforts to meet the intervals called for in this Agreement. If Qwest nevertheless fails to meet such intervals, Qwest must demonstrate to the Commission that such failures were due solely to the fact that Qwest received an extraordinary number of complex Collocation applications within a limited time frame.

#### **8.4.2 Ordering - Virtual Collocation**

8.4.2.1 Application -- Upon receipt of a complete Collocation Application as

described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.2.2 Quotation – If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar Days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing virtually collocated equipment, will be processed and provisioned within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's Acceptance of the quoted charges.

8.4.2.3 Acceptance -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.2.4 Interval – The interval for Virtual Collocation shall vary depending upon four factors – 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7; 2) whether CLEC provides its Acceptance within seven (7) calendar Days receipt of the quotation; 3) whether CLEC delivers its collocated equipment to Qwest in a timely manner, which shall mean within fifty-three (53) calendar Days of the receipt of the complete Collocation Application; and 4) whether the Application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no instance shall any such interval exceed thirty (30) calendar Days. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.2.4.1 Forecasted Applications with Timely Acceptance – If an Application is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the

Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.2      Forecasted Applications with Late Acceptance – If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within forty-five (45) calendar Days of the receipt of all of CLEC's equipment. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.2.4.3      Unforecasted Applications with Timely Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if space is available, and special conditioning is required, but not major infrastructure, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Application. If space is available and no special conditioning is required and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.4      Unforecasted Applications with Late Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if space is available and special conditioning is required, but not major infrastructure, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Acceptance. If space is available and no special conditioning is required and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the Collocation arrangement within ninety

(90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within fifty-three (53) calendar Days after receipt of the complete Collocation Acceptance, Qwest shall complete the Collocation installation within seventy-five (75) calendar Days of the receipt of all of CLEC's equipment.

8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.3 through 8.4.2.4.4 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than fifty-three (53) calendar Days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.2.4.6 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space– If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to ensure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application. If notwithstanding these efforts, Qwest is unable to meet the interval and cannot reach agreement with CLEC for an extended interval. Qwest may seek a waiver from the Commission to obtain an extended interval.

### **8.4.3 Ordering - Caged and Cageless Physical Collocation**

8.4.3.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities.

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.3.2 Quotation -- If Collocation entrance facilities and space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.3.3 Acceptance -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.

8.4.3.4 Interval -- The interval for Physical Collocation shall vary depending upon three factors -- 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7; 2) whether CLEC provides its Acceptance within seven (7) calendar Days of receipt of the quotation; and, 3) whether the Application requires major infrastructure additions or modifications. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.3.4.1 Forecasted Applications with Timely Acceptance -- If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application.

8.4.3.4.2 Forecasted Applications with Late Acceptance -- If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.

8.4.3.4.3 Unforecasted Applications with Timely Acceptance -- If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if space is available and no special conditioning is required, and if CLEC provides a complete Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if special conditioning is required, but not major infrastructure, and if CLEC provides a complete Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Application.

8.4.3.4.4 Unforecasted Applications with Late Acceptance – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if space is available and no special conditioning is required, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application and if space is available and special conditioning is required, but not major infrastructure, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within one hundred and twenty (120) calendar Days of the receipt of the complete Collocation Acceptance.

8.4.3.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted Collocation Application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.3.4.3 through 8.4.3.4.4 may be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the Collocation Arrangement within an interval of no more than one hundred and fifty (150) calendar Days after receipt of the complete Collocation Application. The need for, and the duration of, an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

8.4.3.4.6 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to ensure that it will meet the intervals set forth in Sections 8.4.3.4.1 and 8.4.3.4.2 when CLEC submits a Collocation Application. If not withstanding these efforts, Qwest is unable to meet the interval and cannot reach agreement with CLEC for an extended interval, Qwest may seek a waiver from the Commission to obtain an extended interval.

#### **8.4.4 Ordering - Interconnection Distribution Frame (ICDF) Collocation**

8.4.4.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's terminations within the Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application. As part of the feasibility study, Qwest will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities. The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by DS0, DS1 and DS3



capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.4.2 Quotation -- If space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar Days of receipt of the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.4.3 Acceptance -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.4.4 Interval -- The interval for ICDF Collocation shall vary depending upon two (2) factors -- 1) whether the request was forecasted in accordance with 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7 and 2) whether CLEC provides its Acceptance within seven (7) calendar Days of the quotation. When Qwest is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.4.4.1 Forecasted Applications with Timely Acceptance -- If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within forty-five (45) calendar Days of the receipt of the complete Collocation Application.

8.4.4.4.2 Forecasted Applications with Late Acceptance -- If a Premises is included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within forty-five (45) calendar Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.4.4.3 Unforecasted Applications with Timely Acceptance -- If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application, and if CLEC provides a complete

Acceptance within seven (7) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within forty-five (45) calendar Days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premises does not have an existing ICDF, or space for a new ICDF. If Qwest can demonstrate that such ICDF space is not available, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Application. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

**8.4.4.4.4 Unforecasted Applications with Late Acceptance** – If a Premises is not included in CLEC's forecast at least sixty (60) calendar Days prior to submission of the Application and if CLEC provides a complete Acceptance more than seven (7) calendar Days but less than thirty (30) calendar Days after receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Collocation arrangement within forty-five (45) calendar Days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premises does not have an existing ICDF or space for a new ICDF. If Qwest can demonstrate that such ICDF space is not available, Qwest shall complete its installation of the Collocation arrangement within ninety (90) calendar Days of the receipt of the complete Collocation Acceptance. This interval may be lengthened if space must be reclaimed or reconditioned. The need for an extended interval shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for an extended interval, in which case Qwest must request a waiver from the Commission.

#### **8.4.5 Ordering – Adjacent Collocation**

**8.4.5.1** If space for Physical Collocation in a particular Qwest Premises is not available at the time of CLEC's request, CLEC may request Qwest to conduct a feasibility study for Adjacent Collocation for that Premises site. Qwest recommends that Qwest and CLEC conduct a joint site visit of such Premises to determine if suitable arrangements can be provided on Qwest's property. Qwest will make available, within ten (10) business days, drawings of the Qwest physical structures above and below ground for the requested Adjacent Collocation site.

**8.4.5.2** If a new structure is to be constructed, the interval shall be developed on an Individual Case Basis, to account for the granting of permits or ROW, if required, the provision of Collocation services by Qwest, in accordance with CLEC's Application, and the construction by CLEC of the adjacent structure. If CLEC disputes the interval proposed by Qwest, Qwest must promptly petition the Commission for approval of such disputed interval.

**8.4.5.3** If Adjacent Collocation is provided within an existing Qwest Premises, the ordering procedures and intervals for Physical Collocation shall apply.

#### **8.4.6 Ordering – Remote Collocation and Adjacent Remote Collocation**

8.4.6.1 The ordering procedures and intervals for Physical Collocation or Virtual Collocation shall apply to Remote Collocation, and to Adjacent Remote Collocation provided within an existing Qwest Premises, except Sections 8.4.3.4.3 and 8.4.3.4.4. Remote Collocation and Adjacent Remote Collocation are ordered using the Remote Collocation Application Form.

8.4.6.2 If space for Physical Collocation or Virtual Collocation in a particular Qwest Remote Premises is not available at the time of CLEC's request, CLEC may order Adjacent Remote Collocation using the ordering procedures described above for Adjacent Collocation in Sections 8.4.5.1 and 8.4.5.2.

#### **8.4.7 Ordering – CLEC to CLEC Connections**

8.4.7.1 Application -- Upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j). Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of CLEC's copper, coax, or fiber optic cable, or any other Technically Feasible method used to interconnect CLEC's collocated equipment that is in separate locations in the same Qwest Premises, or to another CLEC's equipment in the same Premises. The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.7.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.7.2 Quotation -- If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route to CLEC with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a feasibility and quote to CLEC no later than ten (10) calendar Days of receipt of the Collocation Application. CLEC-to-CLEC Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.7.3 Acceptance -- There are two (2) forms of Acceptance for CLEC-to-CLEC Connections:

8.4.7.3.1 CLEC-to-CLEC connections with existing cable rack. -- CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its Acceptance. Upon receipt of a complete Collocation Acceptance, CLEC may begin placement of its copper, coax, or fiber cables along the Qwest designated cable rack route. Recurring charges will begin with CLEC Acceptance.

8.4.7.3.2 CLEC-to-CLEC Connections using new cable rack. -- Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.7.4 Interval – Pursuant to Section 8.4.7.3.2, the construction interval for CLEC-to-CLEC Connections requiring the construction of new cable rack by Qwest shall be within sixty (60) calendar Days of the receipt by Qwest of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) calendar Days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.7.5 A CLEC need not utilize the CLEC to CLEC connection process or the collocation application process to connect two contiguous collocation spaces leased by that CLEC that are adjacent to each other; provided that there is existing cable racking that the CLEC can use.

#### 8.4.8 Ordering – Direct Connections

8.4.8.1 Application – Where Direct Connection is requested in a Wire Center where CLEC already has established Collocation, upon receipt of the applicable portions of a complete Collocation Application as described in Section 8.4.1.5 (Subsections a, e, h and j), Qwest will perform a feasibility study to determine if adequate cable racking can be found for the placement of copper, coax, or fiber optic cable, or any other Technically Feasible method, used for Direct Connection (as described in Section 8.3.1.11.2). The feasibility study will be provided within ten (10) calendar Days from date of receipt of a complete Application.

8.4.8.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar Days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the Collocation queue for the requested Premises, CLEC must cure any deficiencies in its Application and resubmit the Application within ten (10) calendar Days after being advised of the deficiencies.

8.4.8.2 Quotation – If existing cable racking is available, Qwest will provide CLEC with a quote and the specific cable rack route with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Qwest shall provide a quote to CLEC no later than ten (10) calendar Days after receipt of a complete Collocation Application. Direct Connection quotes will be honored for thirty (30) calendar Days from the date the quote is provided. During this period, the space is reserved pending CLEC's Acceptance of the quoted charges.

8.4.8.3 Acceptance – There are two (2) forms of Acceptance for Direct Connection:

8.4.8.3.1 Direct Connection with existing cable rack. – CLEC must submit payment of one hundred percent (100%) of the quoted nonrecurring charges with its acceptance notification.

8.4.8.3.2 Direct Connection using new cable rack. – Upon receipt of a complete Acceptance from CLEC, as described in Section 8.4.1.6, Qwest will begin construction of the new cable rack.

8.4.8.4 Interval – The construction interval for Direct Connections shall be dependent upon whether the Direct Connection is to the COSMIC™ frame requiring a MELD™ and or if new cable racking is required.

8.4.8.4.1 If CLEC provides a complete Acceptance within thirty (30) calendar Days of receipt of the Qwest Collocation quotation, Qwest shall complete its installation of the Direct Connection above the DS0 level where no new cable racking is required within thirty (30) calendar Days of the receipt of the complete Collocation Acceptance. If Direct Connection is required at the DS0 level, to the COSMIC™, or if new cable racking needs to be installed, Qwest will provision the direct trunking within sixty (60) calendar Days of the receipt of the complete Collocation Acceptance.

#### **8.4.9 Ordering – Collocation Cancellation, Decommission and Transfer of Responsibility Form**

8.4.9.1 Cancellation requires submission of a “Cancellation, Decommission, and Change of Responsibility Application Form”.

8.4.9.1.1 The Application form is located on the Qwest web site at: <http://www.qwest.com/wholesale/pact/collocation.html>.

8.4.9.1.2 The Application must be submitted to [colo@qwest.com](mailto:colo@qwest.com) and [rfsmet@qwest.com](mailto:rfsmet@qwest.com)

8.4.9.1.3 Qwest will follow its standard Cancellation order validation procedures, providing acknowledgment of acceptance or rejection within one business day of receipt of a valid and complete Application.

8.4.9.2 Decommissioning requires submission of a “Cancellation, Decommission, and Change of Responsibility Application Form”.

8.4.9.2.1 The Application form is located on the Qwest web site at: <http://www.qwest.com/wholesale/pact/collocation.html>.

8.4.9.2.2 The Application must be submitted to [colo@qwest.com](mailto:colo@qwest.com) and [rfsmet@qwest.com](mailto:rfsmet@qwest.com)

8.4.9.2.3 Qwest will notify CLEC within one (1) business day if the prerequisites have been met. Qwest will validate the order within two (2) business days from receipt of the application.

8.4.9.3 The Transfer of Responsibility process requires submission of the Transfer of Responsibility Application Form containing information for both the vacating and the assuming CLEC.

8.4.9.3.1 The Transfer of Responsibility Application Form can be found on

Qwest's web site at: <http://www.qwest.com/wholesale/pcat/collocation.html>.

8.4.9.3.2 The Transfer of Responsibility request should be submitted to [colo@qwest.com](mailto:colo@qwest.com) and [rfsmet@qwest.com](mailto:rfsmet@qwest.com) simultaneously.

#### **8.4.10 Ordering – Available Inventory**

8.4.10.1 CLEC must submit a "Qwest Collocation Application Form (new, change or augment)" on the Qwest web at: <http://www.qwest.com/wholesale/pcat/collocation.html>

8.4.10.2 The "submit" date for the Collocation Available Inventory request will commence on the date that the Wholesale Project Manager (WPM) notifies the Collocation Project Management Center (CPMC) that all prerequisites for this request to have been met.

8.4.10.3 Qwest will process the Available Inventory Request pursuant to the Collocation Intervals contained in this Agreement.

8.4.10.3.1. Special Site interval will be forty-five (45) Calendar Days from the receipt of payment.

8.4.10.4 For purposes of first-come, first-served determination of availability, priority will be defined by the date and time the complete application is received by [rfsmet@qwest.com](mailto:rfsmet@qwest.com).

8.4.10.5 CLECs should submit an alternative option when requesting an available site by populating the "Second Choice" and/or "Third Choice" tabs included on the Qwest Collocation Application Form. This will prevent the possible cancellation of the submitted application in the event that the first choice is no longer available.

#### **8.4.11 Ordering – Joint Testing**

8.4.11.1 Qwest will accept a request to provide Joint Testing for up to sixty (60) calendar days past scheduled RFS. CLEC is required to submit a request for Joint Testing by checking the Joint Testing box on the New, Change or Augment Collocation Application Form or by sending in the separate Joint Testing Application Form.

8.4.11.2 Applications should be sent to [rfsmet@qwest.com](mailto:rfsmet@qwest.com). Upon receipt of a complete Application Form, Qwest will contact CLEC to set up a testing time based upon the scheduled RFS.

#### **8.4.12 Ordering – DC Power Reduction**

8.4.12.1 CLEC should submit the "Collocation Application for New, Augment or Change" and indicate specific power feeds to be reduced (e.g., eliminate or reduce multiple feeds from 60 to zero amps or reduce main feed from 60 to 20 amps). Under

the "type of request" category CLEC should indicate that this is an Augment.

## **8.5 Billing**

### **8.5.1 Billing - All Collocation**

8.5.1.1 Upon completion of the Collocation construction activities and payment of the remaining nonrecurring balance, Qwest will provide CLEC a completion package that will initiate the recurring Collocation charges. Once this completion package has been signed by CLEC and Qwest, and Qwest has received the final fifty percent (50%) balance, Qwest will activate CLEC transport services and/or UNEs or ancillary services coincident with completion of the Collocation.

8.5.1.2 In the event Qwest has completed all associated construction activities and CLEC has not completed its associated activities (e.g., delivering fiber to the C-POI, or providing the equipment cables for connecting to the Interconnection Distribution Frame), Qwest will bill an adjusted amount of the remaining nonrecurring balance, close the job, and begin Billing the monthly recurring rent charge. In those instances where the job is delayed due to CLEC not having its fiber to the POI, Qwest will request the balance due minus the dollar amount specific to this work activity, and begin Billing the monthly recurring rent charge. Once CLEC has completed fiber placement, CLEC can request Qwest to return and complete the splicing activity at the rate reflected in this Agreement. In the case of missing equipment cables, CLEC will be responsible for installing the cables if not delivered at job completion. The installation activity must be conducted by a Qwest approved vendor and follow the designated racking route. Final test and turn-up will be performed under the Maintenance and Repair process contained herein.

8.5.1.3 Should Qwest fail to activate CLEC equipment or services, CLEC MRCs for such equipment or services will be credited on a monthly pro-rata basis until the equipment or services ordered are fully usable.

### **8.5.2 Billing - Virtual Collocation**

8.5.2.1 Virtual Collocation will be considered complete when the Premises is Ready for Service (RFS). Cooperative testing between CLEC and Qwest may be negotiated and performed to ensure continuity and acceptable transmission parameters in the facility and equipment.

### **8.5.3 Billing - Caged and Cageless Physical Collocation**

8.5.3.1 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charges, Qwest will schedule with CLEC, a walk through of the space. During this joint walk through, Qwest will turn over access to the space and provide security access for the Premises. Upon completion of the Acceptance walk through, CLEC will be provided the Caged or Cageless Physical Collocation completion package. The monthly Billing for leased space, DC Power, Entrance Facility, and other associated monthly charges will commence with CLEC sign off on the completion of the physical

space. CLEC may then proceed with the installation of its equipment in the Collocation space, unless early access has been arranged pursuant to Section 8.2.3.7. If Qwest, despite its best efforts, including notification through the contact number on the Collocation Application, is unable to schedule the walk through with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the monthly recurring charges.

#### **8.5.4 Billing – Transfer of Responsibility**

8.5.4.1 Vacating CLEC is obligated to pay all recurring charges associated with the Collocation until Qwest completes the Transfer of Responsibility request. When the RFS date is met, Qwest will begin to bill the assuming CLEC for all recurring billing, charges based on the CLEC's Interconnection Agreement, and cease the recurring billing for the vacating CLEC.

8.5.4.2 Assuming CLEC will be responsible for the monthly charges for the working circuits and charges for the transfer of the working circuits agreed to be transferred as part of the Transfer of Responsibility request (if applicable).

### **8.6 Maintenance and Repair**

#### **8.6.1 Virtual Collocation**

8.6.1.1 Maintenance Labor, Inspector Labor, Engineering Labor and Equipment Labor business hours are considered to be Monday through Friday, 8:00 am to 5:00 pm (local time) and after business hours are after 5:00 pm and before 8:00 am (local time), Monday through Friday, all day Saturday, Sunday and holidays.

8.6.1.2 Installation and maintenance of CLEC's virtually collocated equipment will be performed by Qwest or a Qwest authorized vendor.

8.6.1.3 Upon failure of CLEC's virtually collocated equipment, Qwest will promptly notify CLEC of such failure and the corrective action that is needed. Qwest will repair such equipment within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of Qwest. CLEC is responsible for transportation and delivery of maintenance spares to Qwest at the Premises housing the failed equipment. CLEC is responsible for purchasing and maintaining a supply of spares.

#### **8.6.2 Physical Collocation**

8.6.2.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's leased space.

#### **8.6.3 Interconnection Distribution Frame Collocation**

8.6.3.1 CLEC is responsible for using industry accepted practices for its terminations. Additionally, CLEC is responsible for having tools for such operations. Qwest is responsible for the overall repair and maintenance of the frame; including horizontal and vertical mounting positions, cable raceways, rings, and troughs, and general housekeeping of the frame.



#### **8.6.4 Adjacent Collocation and Adjacent Remote Collocation**

8.6.4.1 CLEC is responsible for the Maintenance and Repair of its equipment located within CLEC's Adjacent Collocation and Adjacent Remote Collocation space.

#### **8.6.5 Reserved for Future Use**

## SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

### 9.1 General Terms

OPEN - Covad proposed; Qwest cannot agree

9.1.1 Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations. Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) or Section 271 of the Act, or other Applicable Laws. Failure to list a Section 251, Section 271 or state-mandated UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A.

**Deleted:** UNE's shall only be obtained for the provision of Qualifying Services.

**Deleted:** If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternative service arrangements.

9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services, for the commingling of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications services pursuant to Applicable Law.

9.1.1.2 CLEC may Comingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with access services or other Non-Qualifying services. All variations of Commingling of services that include a high capacity loop, which may include multiplexing or any other means by which this combination is achieved, and transport facility or service are subject to the Service Eligibility Criteria in Section 9.1.1.5.

9.1.1.2.1 Work performed by Qwest to Commingle services at CLEC's request or to provide services that are not subject to standard provisioning intervals will not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled facility or service. Provisioning intervals applicable to services included in a requested Commingled facility or service will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

9.1.1.3 Qwest will not Commingle services or Network Elements that are required to be unbundled by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements. Qwest will not combine services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with other services or Network Elements offered pursuant to Section 271 or Unbundled Network Elements or combinations of Unbundled Network Elements.

9.1.1.3.1 Services available for commingling shall be provided by Qwest pursuant to Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

9.1.1.3.2 Entrance Facilities obtained pursuant to Section 7 of this Agreement are not available for Commingling. Entrance Facilities obtained pursuant to Qwest's Tariffs are available for Commingling.

9.1.1.4 **Ratcheting** - To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of the UNEs or UNE Combinations involved.

9.1.1.4.1 Intentionally Left Blank.

9.1.1.4.2 Intentionally Left Blank.

9.1.1.4.3 To the extent a multiplexer is included in a Commingled circuit then: (1) the multiplexer will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs, or (2) in all other situations the multiplexer will be ordered and billed pursuant to the appropriate Tariff

9.1.1.5 **Service Eligibility Criteria** - With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport (High Capacity EELs), there are additional eligibility criteria that do not apply to other UNEs. CLEC can not order any EELs without an EEL amendment. This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs. Upon request by CLEC, and to the extent required by Applicable Law, the parties will negotiate an amendment to this Agreement that will enable CLEC to order EELs subject to any

service eligibility criteria established by Applicable Law.

OPEN – Covad proposed deletion; Qwest cannot agree; Covad counter below

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.

OPEN – Qwest proposed; Covad cannot agree; Covad counter below

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.

OPEN – Covad proposed counter; Qwest cannot agree

9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a Interconnection Agreement, any of the Network above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, then Qwest shall bill for such UNEs and services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs.

9.1.1.8 Intentionally Left Blank.

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network

**Deleted:** 9.1.1.6 . On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.¶  
a) . OCn Loops;¶  
b) . Feeder Subloops;¶  
c) . DS3 Loops in excess of two (2) DS3 Loops per End User Customer location;¶  
d) . E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center); ¶  
e) . OCn UDIT ¶  
f) . DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 circuits per route; ¶  
g) . Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P);¶  
h) . Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P; ¶  
i) . Packet Switching;¶  
j) . UDIT and UDF as a part of a Meet-Point arrangement; billed entrance facility; ¶  
k) . Remote Node/Remote Port¶  
l) . Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section 9.4.1.2;¶  
m) . Fiber to the Home, in accordance with Section 9.2.1.2; ¶  
n) . Operator Services and Directory Assistance, except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;¶  
o) . Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0;¶  
p) . Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;¶  
q) . SONET add/drop multiplexing; and¶

[... [1]

**Deleted:** preceding

**Deleted:** Elements described in Section 9.1.1.6

**Deleted:** absent an agreement to the contrary

**Deleted:** in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement

9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement.

- a) OCn Loops;
- b) Feeder Subloops;
- c) DS3 Loops in excess of two (2) DS3 Loops per End User Customer location;
- d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center);
- e) OCn UDIT
- f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess of twelve (12) DS3 circuits per route;
- g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P);
- h) Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P;
- i) Packet Switching;
- j) UDIT and UDF as a part of a Meet-Point arrangement; billed entrance facility;
- k) Remote Node/Remote Port
- l) Line Sharing, in accordance with the Grandfathering and Transition Plan described in Section 9.4.1.2;
- m) Fiber to the Home, in accordance with Section 9.2.1.2;
- n) Operator Services and Directory Assistance. except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent;
- o) Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0;
- p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;

Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards.

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities (either "as is" or modified via conditioning or incremental facility work that fits the criteria for the service requested or is otherwise required by the Existing Rules) exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.2.1 Qwest will also perform routine modifications to existing loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers, including, but not limited to, rearrangement or splicing of cable (including rearrangement of existing pairs to include fiber hub counts and rearrangement of existing pairs to extend the line), adding a doubler or repeater, adding and/or rearranging an equipment case, adding a smart jack, installing a repeater shelf, adding a line card, and deploying a new multiplexer or reconfiguring an existing multiplexer. Rates for such modifications are included in Exhibit A. For DS1 capable loops, this Section is effective immediately. For all other loop facilities, this Section will be effective July 2, 2004.

9.1.2.1.2.2 Qwest will also perform routine modifications to existing Dark Fiber loop and transport facilities used by CLEC to the same extent it performs such activities for its own retail End User Customers (including the work done on Dark Fiber to provision lit capacity to End User Customers). Rates for such modifications are included in

Exhibit A. This Section is effective July 2, 2004. To the extent such modifications constitute a construction of Special Access services, pursuant to retail construction provisions of Special Access or stand-alone construction Tariffs, the terms and conditions of such Tariffs will apply to CLEC. The provisions of this Section shall not be construed to require Qwest to provide unbundled access to a Fiber-to-the-Home loop when Qwest deploys such a loop to a End User Customer premises.

9.1.2.1.2.3 Qwest performs routine, day-to-day work activities while managing its network. Activities such as accessing manholes and deploying bucket trucks to reach aerial cable do not comprise network modifications. Rather these activities are performed by Qwest to effectuate network modifications.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:

9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a supplemental order to change the Due Date to a later date.

9.1.2.1.3.2 Qwest will send CLEC a jeopardy clearly stating there is a lack of available facilities and the order will be delayed. In the event Qwest notifies CLEC that facilities ordered are not available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall send a new FOC to the CLEC identifying for the CLEC a new Due Date. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this section.

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds \$100,000 in total cost, the estimated ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for

Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

9.1.2.1.5 Intentionally Left Blank.

9.1.3 Reserved for Future Use.

9.1.4 Qwest will provide a connection between Unbundled Network Elements and a Loop Demarcation Point. Such connection is an Interconnection Tie Pair (ITP). An ITP is required for each Unbundled Network Element or ancillary service delivered to CLEC. The ITP provides the connection between the Unbundled Network Element and the ICDF or other Central Office Demarcation Point. The ITP is ordered in conjunction with a UNE. The charges for the ITP are contained in Exhibit A. The ITP may be ordered per termination. The Demarcation Point shall be:

- a) at CLEC-provided Cross Connection equipment located in CLEC's Virtual or Physical Collocation Space; or
- b) if CLEC elects to use ICDF Collocation, at the Interconnection Distribution Frame (ICDF); or
- c) if CLEC elects to use an ICDF in association with Virtual or Physical Collocation, at the ICDF; or
- d) if CLEC elects to use a direct connection from its Collocation space to the distribution frame serving a particular element, at the distribution frame; or
- e) at another Central Office Demarcation Point mutually-agreed to by the Parties.

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9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271 et seq. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Qwest provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this Section 9.1.6 are contained in Exhibit A to this Agreement.

9.1.6.1 When elements are provisioned by Qwest on an individual element basis

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(whether or not such elements are combined by CLEC with other elements provided by Qwest or CLEC):

- a) Qwest will perform testing necessary or reasonably requested by CLEC, to determine that such UNE is capable of meeting the technical parameters established for each UNE.
- b) Pursuant to Section 12.3, Qwest will repair and maintain such elements to ensure that they continue to meet the technical parameters established for each UNE. CLEC is responsible for the end-to-end transmission and circuit functionality testing for UNE Combinations created by CLEC.
- c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to assist in determining end-to-end transmission and circuit functionality of such UNE.

9.1.6.2 When elements are provisioned by Qwest in combination:

- a) Qwest will perform testing necessary or reasonably requested by CLEC to determine that such combination and each UNE included in such combination is capable of meeting the technical parameters of the combination.
- b) Pursuant to Section 12.3, Qwest will repair and maintain such combination and each UNE included in such combination to ensure that they continue to meet the technical parameters of the combination.
- c) Qwest will cooperate with CLEC in any Technically Feasible testing necessary or reasonably requested by CLEC to determine end-to-end transmission and circuit functionality of such combination.

9.1.7 Installation intervals for Unbundled Network Elements are contained in Exhibit C.

9.1.8 Maintenance and Repair is described herein. The repair center contact telephone numbers are provided in the Maintenance and Repair PCAT, which is located on the Qwest Web site.

9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC.

9.1.9.1 Qwest shall provide advance notice of changes that affect network Interoperability pursuant to applicable FCC rules. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Qwest provides such disclosures on an Internet web site.

9.1.10 Intentionally Left Blank.

9.1.11 Exhibit A of this Agreement contains the rates for Unbundled Network Elements.

9.1.12 Miscellaneous Charges are defined in Section 4.40 (a). Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in Exhibit A. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges. Rates for Miscellaneous Charges are contained in Exhibit A. Unless otherwise provided for in this Agreement, no additional charges will apply.

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9.1.14 Intentionally Left Blank.

9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper Subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site ([www.qwest.com/disclosures](http://www.qwest.com/disclosures)); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.

## 9.2 Unbundled Loops

### 9.2.1 Description

The Unbundled Loop is defined as a transmission facility between a distribution frame (or its equivalent) in a Qwest Central Office and the Loop Demarcation Point at an End User Customer's premises. The Unbundled Loop includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, Dark Fiber, attached electronics and line conditioning. As used in this Agreement, "attached electronics" means any electronics necessary to provide the requested transmission path, including electronics added through incremental facilities work, but does not include multiplexing equipment, such as Digital Subscriber Line Access Multiplexers, used for the provision of Advanced Services. The Unbundled Loop includes DS0, DS1, and DS3 Loops. Qwest will not provide Unbundled OCn Loops or features and functionalities of OCn Loops.

9.2.1.1 "Loop Demarcation Point" – For purposes of this section, Loop Demarcation Point is the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, owner or landlord ownership of facilities begins.

9.2.1.2 **FTTH Loops.** For purposes of this Section, a Fiber-to-the-Home ("FTTH") loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's premises.

9.2.1.2.1 **FTTH New Builds.** Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's premises that had not previously been served by any loop facility prior to October 2, 2003.

9.2.1.2.2 **FTTH Overbuilds.** Qwest shall have no obligation to provide access to a FTTH loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH loop

parallel to, or in replacement of, an existing copper loop facility:

9.2.1.2.2.1 Qwest shall: (i) leave the existing copper loop connected to the End User Customer's premises after deploying the FTTH loop to such premises and (ii) upon request to provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 9.2.1.2.2 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 9.2.1.2.3 below.

9.2.1.2.2.2 In the event Qwest, in accordance with the provisions of Section 9.2.1.2.3 below, retires the existing copper loop connected to the End User Customer's premises, Qwest shall provide access, as an Unbundled Network Element over the FTTH loop, to a 64 kbps transmission path capable of voice grade service.

9.2.1.2.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH Loop, Qwest will: (i) provide notice of such planned replacement on its website ([www.qwest.com/disclosures](http://www.qwest.com/disclosures)); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement in accordance with FCC Rules. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as identified in the FCC Rules, unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state Commission requirements.

9.2.1.2.3.1 When infrastructure demand requires Qwest to retire Copper Loops or Copper Subloops, Qwest will leave Copper Loops or Copper Subloops serving CLEC End User Customers in service where it is technically feasible to do so. Should retired copper facilities be replaced by like copper facilities, Qwest and CLEC will jointly coordinate the transition of current working Copper Loops and Subloops to like copper facilities so that service interruption is held to a minimum.

9.2.1.2.3.2 When Qwest retires Copper Loops or Copper Subloops and the replacement facilities include the placement of a remote DSLAM, to the extent that space is available, Qwest will offer CLEC Remote Collocation and/or Field Connection Point (FCP) pursuant to this Agreement in order to maintain existing services, including xDSL service provided by CLEC. Qwest and CLEC will jointly coordinate the transition of current working facilities to the new working facilities so that service interruption is held to a minimum.

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9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location pursuant to Section 251 of the Act, Qwest will provide access to such loops pursuant to Section 271 of the Act and applicable state law. Qwest will maintain on its website a separate listing for DS1, DS3, and Dark Fiber Loops for those End User Customer premises for which the Commission has found non-impairment under Section 251 of the Act. In the event CLEC has DS1, DS3, or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for any records changes, or alternate services, as required by applicable state law, and requested by Qwest. If such alternative arrangements are not in place within sixty (60) days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with Section 9.1.1.7 above.

**Deleted:** location, Qwest will not provide, and CLEC shall not submit orders for,

**Deleted:** DS1, DS3, or Dark Fiber Loops, as appropriate, to such specific End User Customer locations.

**Deleted:** so found.

**Deleted:** other service.

**Deleted:** Days

**Deleted:** the Qwest Special Access Tariff.

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9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not required to provide pursuant to Section 251 of the Act, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location. Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7 above.

9.2.1.5 Hybrid Loops – A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

9.2.1.5.1 Packet Switching Facilities, Features, Functions and Capabilities – CLEC will not order packet switching under this Agreement.

9.2.1.5.2 Broadband Services – When CLEC seeks access to a Hybrid Loop for the provision of broadband services, Qwest shall provide CLEC with nondiscriminatory access to the time division multiplexing (TDM) features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between Qwest's Central Office and an End User Customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information. Qwest will not engage in any practice, policy or procedure that has the effect of disrupting or degrading access to TDM-based features, functions, and capabilities of hybrid loops for serving end users.

9.2.1.5.3 Narrowband Services – When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

- a) Provide nondiscriminatory access, on an unbundled basis, to

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an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology, allowing CLEC to obtain access to UNE loops comprised of the feeder, distribution, the attached DLC system, and any other attached electronics used to provide a voice-grade transmission path between the customer's premises and the Central Office; or

b) Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis if Qwest has not removed such loop facilities, and they remain functional.

## 9.2.2 Terms and Conditions

9.2.2.1 Qwest shall provide CLEC, on a non-discriminatory basis, Unbundled Loops, (unbundled from local switching and transport) of substantially the same quality as the Loop that Qwest uses to provide service to its own end users. For Unbundled Loops that have a retail analogue, Qwest will provide these Unbundled Loops in substantially the same time and manner as Qwest provides to its own end users. Unbundled Loops shall be provisioned in accordance with Exhibit C and the performance metrics set forth in Section 20 and with a minimum of service disruption.

9.2.2.1.1 Use of the word "capable" to describe Loops in Section 9.2 means that Qwest assures that, upon delivery to CLEC, the Loop meets the technical standards associated with the specified Network Channel/Network Channel Interface codes, as contained in the relevant technical publications and industry standards, and is in good working condition. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.2 Use of the word "compatible" to describe Loops in Section 9.2 means that, upon delivery to CLEC, the Unbundled Loop complies with technical parameters of the specified Network Channel/Network Channel Interface codes as specified in the relevant technical publications and industry standards, and is in good working condition. Qwest makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer premises equipment. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.1.3 If Qwest uses Integrated Digital Loop Carrier (IDLC) systems to provide the Local Loop, Qwest will first attempt, to the extent possible, to make alternate arrangements such as Line and Station Transfers (LST), to permit CLEC to obtain a contiguous copper Unbundled Loop. If a LST is not available, Qwest may also seek alternatives such as Integrated Network Access (INA), hair pinning, or placement of a Central Office terminal, to permit CLEC to obtain an Unbundled Loop. If no such facilities are available, Qwest will make every feasible effort to provision Unbundled Loops over IDLC in order to provide the

Unbundled Loop for CLEC. All such attempts will be made and completed within the standard interval specified in Exhibit C and at the rates specified in Exhibit A for the type of Local Loop ordered by CLEC.

9.2.2.1.3.1 CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of available copper facilities, pursuant to the procedures set forth in Section 9.2.2.8 and its subsections. Qwest may provide mediated access to such information once the information has been provided to CLEC in the same manner as it is provided to any Qwest employee. Qwest may recover any reasonable costs it incurs to provide such mediated access in the same manner as it recovers other OSS transition costs under the Commission's orders.

9.2.2.2 Analog (Voice Grade) Unbundled Loops. Analog (voice grade) Unbundled Loops are available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local exchange type services. For the two-wire configuration, CLEC must specify the signaling option. The actual Loop facilities may utilize various technologies or combinations of technologies. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.2.1 Intentionally Left Blank.

9.2.2.2.2 If there are state service quality rules in effect at the time CLEC requests an Analog Unbundled Loop Qwest will provide an Analog Unbundled Loop that meets the state technical standards. If necessary to meet the state standards, Qwest will, at no cost to CLEC, remove load coils and excess Bridged Taps from the Loop in accordance with the requirements of the specific technical standard.

9.2.2.3 Digital Capable Loops – DS1 and DS3 Capable Loops, Basic Rate (BRI) ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops. Unbundled digital Loops are transmission paths capable of carrying specifically formatted and line coded digital signals. Unbundled digital Loops may be provided using a variety of transmission technologies including, but not limited to, metallic wire, metallic wire based digital Loop carrier, and fiber optic fed digital carrier systems. Qwest will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service. Digital Loops may use a single or multiple transmission technologies. DC continuity does not apply to digital capable Loops. If conditioning is required for BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops or xDSL-I Capable Loops, then CLEC shall be charged for such conditioning, if applicable, as set forth in Exhibit A, if it authorized Qwest to perform such conditioning. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide.

9.2.2.3.1 If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) the BRI ISDN Capable Loops, 2/4 Wire Non-Loaded Loops, ADSL Compatible Loops and xDSL-I Capable Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. Qwest will perform line moves from digital loop carrier or UDCs to an available spare copper loop or removal of UDCs in accordance with Qwest's facility provisioning and routine network modification processes; notwithstanding the foregoing, Qwest may modify or discontinue such processes pursuant to Applicable Law. If applied by Qwest, the interim charge for UDC removal or line move will be no more than the conditioning charge contained in Exhibit A until permanent rates are approved by the Commission. These charges for UDC removal or line moves will not be assessed to CLEC unless Qwest also has filed with the Commission allowing charges for its retail customers for the same work. Qwest will notify CLEC through CMP prior to implementing any charges for UDC removal or line moves.

9.2.2.3.2 Intentionally Left Blank.

9.2.2.3.3 If CLEC orders a 2/4 wire non-loaded or ADSL compatible Unbundled Loop for a Customer served by a digital Loop carrier system Qwest will conduct an assignment process which considers the potential for a line move to alternative spare copper facility. If no copper facility capable of supporting the requested service is available, Qwest will hold the order pending availability of facilities as set forth in Section 9.1.2.1.3.2.

9.2.2.4 Non-Loaded Loops. CLEC may request that Qwest provide a non-loaded Unbundled Loop. Qwest and CLEC will verify the parameters associated with the Unbundled Loop ordered by CLEC. If CLEC elects to provision services beyond the agreed upon parameters, CLEC shall accept the risk that the Unbundled Loop selected may not be suitable for providing the type of service CLEC seeks to provide. CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary. If CLEC has not pre-approved conditioning, Qwest will obtain CLEC's consent prior to undertaking any conditioning efforts. Upon CLEC pre-approval or approval of conditioning, and only if conditioning is necessary, Qwest will dispatch a technician to perform line move or condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded Loop. Qwest's FOC will not reflect the loop conditioning interval until such time that Qwest determines conditioning is the only available solution for providing the loop. CLEC will be charged the nonrecurring conditioning charge (i.e., cable unloading and Bridged Taps removal), if applicable, in addition to the Unbundled Loop installation nonrecurring charge.

9.2.2.4.1 In the event that Qwest seeks to begin charging for conditioning, where Qwest fails to meet a Due Date for performing Loop conditioning, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the Unbundled Loop involved within three (3) months of such Due Date. Where Qwest does not perform conditioning in accord with the standards applicable under this Agreement, and such performance causes the due date to be missed, CLEC shall be entitled to a waiver of all non-recurring charges associated with the installation of the loop. Any credit to which CLEC is entitled under this provision will be automatically credited by Qwest to

CLEC's bill within sixty (60) calendar Days.

9.2.2.5 When CLEC requests a Basic Rate ISDN capable or an xDSL-I capable Loop, Qwest will dispatch a technician, if necessary, to provide Extension Technology that takes into account for example: the additional regenerator placement, Central Office powering, Mid-Span repeaters, if required, BRITE cards in order to provision the Basic Rate ISDN capable and xDSL-I capable Loop. Extension Technology may be required in order to bring the circuit to the specifications necessary to accommodate the requested service. If the Circuit Design requires Extension Technology, to bring it up to the design standards, contained in Technical Publication 77384, it will be added by Qwest, at no charge. Extension Technology can also be requested by CLEC to meet their specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Qwest will provide the requested Extension Technology and will charge CLEC. Qwest will provision ISDN (BRI) Capable and xDSL-I capable Loops using the specifications in the Technical Publication 77384. CLEC will be charged an Extension Technology recurring charge in addition to the Unbundled Loop recurring charge, if applicable, as specified in Exhibit A of this Agreement. The ISDN Capable Loop may also require conditioning (e.g., removal of load Coils or Bridged Taps) pursuant to Exhibit A.

9.2.2.6 For DS1 or DS3 capable Loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. Prior to delivery, Qwest will test to ensure circuit continuity from the demarcation point in the Central Office to the NID. Qwest will perform a loop back test when a Network Interface Unit (NIU) is in place. In addition, CLEC will have access to these terminations for testing purposes.

9.2.2.6.1 DS1 capable Loops provide a transmission path between a Central Office network interface at a DS1 panel or equivalent in a Qwest serving Central Office and the network interface at the end user location. DS1 capable Loops transport bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s. DS1 capable Loops shall meet the design requirements specified in Technical Publication 77384 (Unbundled Loops) and 77375 (DS1). Cable unloading and bridge tap removal that may be required as part of the provisioning of DS-1 Capable Loops are included as a part of routine network modifications. Other functions of routine network modifications are described in Section 9.1.2.1.2 and its subsections.

9.2.2.6.2 DS3 capable Loops provide a transmission path between a Qwest Central Office network interface and an equivalent network interface at an end user location. DS3 capable Loops transport bi-directional DS3 signals with a nominal transmission rate of 44.736 Mbit/s. DS3 capable Loops shall meet the design requirements specified in Technical Publications 77384 (Unbundled Loop) and 77324 (DS3).

9.2.2.7 Intentionally Left Blank

9.2.2.8 Loop Qualification Tools. Qwest offers five (5) Loop qualification tools: the ADSL Loop Qualification Tool, Raw Loop Data Tool, POTS Conversion to Unbundled Loop Tool, MegaBit Qualification Tool, and ISDN Qualification Tool. These and any future Loop qualification tools Qwest develops will provide CLEC access to Loop qualification information in a nondiscriminatory manner and will provide CLEC the



same Loop qualification information available to Qwest. CLEC may request an audit of Qwest's company records, back office systems and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

9.2.2.8.1 ADSL Loop Qualification Tool. CLEC may use the ADSL Loop Qualification tool to pre-qualify the requested circuit utilizing the existing telephone number or address to determine whether it meets ADSL specifications. The qualification process screens the circuit for compliance with the design requirements specified in Technical Publication 77384.

9.2.2.8.2 Raw Loop Data Tools. Qwest offers two (2) types of Raw Loop Data Tool. If CLEC has a digital certificate, CLEC may access the Wire Center Raw Loop Data Tool via: <http://ecom.qwest.com>.

9.2.2.8.2.1 The Wire Center Raw Loop Data Tool functions and capabilities are described in the PCAT.

9.2.2.8.2.2 The Wire Center Raw Loop Data Tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, and pair gain type.

9.2.2.8.2.3 CLEC may also access the IMA Raw Loop Data Tool for Loop specific information. The IMA Raw Loop Data Tool may be accessed through IMA-GUI or IMA-EDI. This tool provides CLEC the following information: Wire Center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, Bridged Taps length by segment, Bridged Taps offset distance, load coil type, number of loads, and pair gain type.

9.2.2.8.3 POTS Conversion to Unbundled Loop Tool. The POTS Conversion to Unbundled Loop Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool informs CLEC whether the facility is copper or pair gain and whether there are loads on the Loop.

9.2.2.8.4 MegaBit Qualification Tool. The MegaBit Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool provides a "yes/no" answer regarding the Loop's ability to support Qwest DSL (formerly MegaBit) service. If the MegaBit Qualification Tool returns a "no" answer, it provides a brief explanation.

9.2.2.8.5 ISDN Qualification Tool. The ISDN Qualification Tool is available to CLECs through IMA-GUI or IMA-EDI. This tool permits CLEC to view information on multiple lines and will inform CLEC of the number of lines found. If an ISDN capable Loop is found, the tool identifies the facility and, if applicable, pair gain.

9.2.2.8.6 If the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if CLEC identifies any inaccuracy in the

information returned from the Loop qualification tools, and provides Qwest with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Qwest will perform a manual search of the company's records, back office systems and databases where Loop information resides. Qwest will provide CLEC via email, the Loop information identified during the manual search within forty-eight (48) hours of Qwest's receipt of CLEC's request for manual search. The email will contain the following Loop make-up information: composition of the Loop material; location and type of pair gain devices; the existence of any terminals such as remote terminals or digital Loop terminals; Bridged Tap and load coils; Loop length; wire gauge. Effective December 8, 2003, the email will also contain Loop make-up data showing the presence of Universal Digital Carrier (UDC); third party voice; and the presence of DSL. In the case of Loops served by digital Loop carrier, the email will provide the availability of spare feeder and distribution facilities that could be used to provision service to the Customer, including any spare facilities not connected to the Switch and Loop make-up for such spare facilities. After completion of the investigation, Qwest will load the information into the LFACS database, which will populate this Loop information into the fields in the Loop qualification tools.

9.2.2.9 Provisioning Options. Six (6) Provisioning options are available for Unbundled Loop elements. Charges for these Provisioning options vary depending on the type of Loop requested. Rates are contained in Exhibit A of this Agreement. Testing parameters are described below and in Qwest Technical Publication 77384.

9.2.2.9.1 Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Qwest will call CLEC to notify CLEC that the Qwest work has been completed.

9.2.2.9.1.1 For an existing end user, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. There is no associated circuit testing performed.

9.2.2.9.1.2 For new end user service, the Basic Installation option involves the COT and Field Technician (CST/NT) completing circuit wiring and performing the required performance tests to ensure the new circuit meets the required parameter limits. The test results are NOT provided to CLEC.

9.2.2.9.1.3 For basic installation of existing 2 / 4 wire analog Loops, Qwest provides a Quick Loop option that enables CLEC to receive the Quick Loop installation interval as set forth in Exhibit C. Quick Loop installation includes only a simple lift and lay procedure. Quick Loop is not available with cooperative testing, coordinated installation, or when unbundling from an IDLC to a copper alternative.

9.2.2.9.2 Basic Installation with Performance Testing. Basic Installation with Performance Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.2.1 For an existing end user, Basic Installation with Performance Testing is a "lift and lay" procedure. The Central Office

Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting CLEC. The COT and Implementor/Tester perform the required performance tests to ensure that the new circuit meets required parameter limits.

9.2.2.9.2.2 The Qwest Implementor/Tester will read the test results to CLEC on close-out and email the performance test results within two (2) business days to a single, designated CLEC office email address.

9.2.2.9.2.3 For new end user service, the Basic Installation with Performance Testing option requires a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits. These test results are read to CLEC by the Qwest Implementor/Tester on close-out. Within two (2) business days, Qwest will email the performance test results to a single, designated CLEC office email address.

9.2.2.9.3 Coordinated Installation with Cooperative Testing. Coordinated installation with cooperative testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.3.1 For an existing end user, Coordinated Installation with Cooperative Testing is a "lift and lay" procedure with cooperative testing. The COT completes the installation in the Central Office and performs testing that CLEC requests. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test CLEC requests that is not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.2 For new end user service, Coordinated Installation with Cooperative Testing may require a dispatch of a technician to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure that the new circuit meets required parameter limits. Upon completion of Qwest performance

testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test not defined in the Qwest Technical Publication 77384.

9.2.2.9.3.3 The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.3.3(a) If, at any time, CLEC believes that the processes described above are not being appropriately executed by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.3.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.3.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.4 Coordinated Installation without Cooperative Testing. Coordinated Installation without Cooperative Testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at the CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option and the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.4.1 For an existing Unbundled Loop this Coordinated Installation without Cooperative Testing is a "lift and lay" procedure

without a dispatch, that offers CLEC the ability to coordinate the conversion activity. The Qwest Implementor advises CLEC when the "lift and lay" procedure is complete.

9.2.2.9.4.2 For new Unbundled Loops, Qwest may dispatch a technician to terminate the new circuit at the end user premises. The Field Technician will not remain on the premises to perform the coordinated installation once the circuit is in place. The COT completes the installation in the Central Office, and the COT and Implementor/Tester complete the required performance tests to ensure that the new circuit meets required parameter limits. CLEC will not receive test results. When installation is complete, Qwest will notify CLEC.

9.2.2.9.5 Basic Installation with Cooperative Testing. Basic Installation with Cooperative Testing may be ordered for new or existing Unbundled Loops.

9.2.2.9.5.1 For an existing end user, Basic Installation with Cooperative Testing is a "lift and lay" procedure with Cooperative Testing on the Due Date. The COT "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. Upon completion of Qwest performance testing, the Qwest Implementor/Tester will contact CLEC, read the Qwest test results, and begin CLEC cooperative testing. Within two (2) business days, Qwest will email the Qwest test results to a single, designated CLEC office email address. CLEC and Qwest will perform a Loop back acceptance test, accept the Loop, and exchange demarcation information.

9.2.2.9.5.2 For new end user service, Basic Installation with Cooperative Testing may require a dispatch to the end user premises. The COT and Field Technician complete circuit wiring and perform the required performance tests to ensure the new circuit meets the required parameter limits.

9.2.2.9.5.2(a) The Parties agree that they will work together, in good faith, to implement cooperative testing procedures that are efficient and effective. If the Parties mutually agree to additional testing, procedures and/or standards not currently covered by this Agreement or any state or federal judicial or regulatory order, the Parties will negotiate terms, conditions and rates to implement such additional testing, procedures and/or standards.

9.2.2.9.5.3 If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.5.3.1 If, at any time, CLEC believes that the processes described above are not being appropriately executed

by Qwest, CLEC is entitled to pursue dispute resolution pursuant to Section 5.18 of the Agreement.

9.2.2.9.5.4 If cooperative testing shows that the loop does not meet all applicable technical specifications, or does not have circuit continuity from the NID to the ICDF, or is otherwise not in good working condition, then:

9.2.2.9.5.4.1 Qwest will undertake all repairs necessary to deliver a working loop. If such repairs will take longer than thirty (30) minutes, Qwest will release CLEC from the testing call. Qwest will complete all repairs the same day provided that Qwest has access to the circuit and premise if required. After making all necessary repairs, Qwest will call CLEC again for cooperative testing to confirm all repair work has been completed and that the loop meets all applicable technical specifications, has continuity from the NID to the ICDF, and is otherwise in good working condition.

9.2.2.9.6 Performance Testing. Qwest performs the following performance tests for various Loop types:

2-Wire and 4-Wire Analog Loops

No Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

2-Wire and 4-Wire Non-Loaded Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss = 0 to -8.5 dB at 1004 Hz

Automatic Number Identification (ANI) when dial-tone is present

Basic Rate ISDN and xDSL-I Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss =  $\leq$  40 dB at 40 kHz

Automatic Number Identification (ANI) when dial-tone is present

DS1 Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

DS3 Capable Loops

Continuity Testing

ADSL Compatible Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

Insertion Loss =  $\leq 41$  dB at 196 kHz

Automatic Number Identification (ANI) when dial-tone is present

9.2.2.9.7 Project Coordinated Installation: A Project Coordinated Installation permits CLEC to obtain a coordinated installation for Unbundled Loops with or without LNP, where CLEC orders Unbundled DS1 Capable, Unbundled DS3 Capable or twenty-five (25) or more DS0 Unbundled Loops.

9.2.2.9.7.1 The date and time for the Project Coordinated Installation requires up-front planning and may need to be negotiated between Qwest and CLEC. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Considerations such as system down time, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Qwest will negotiate with CLEC for an agreed upon FDT, prior to issuing the Firm Order Confirmation (FOC). In special cases where CLEC is ordering Unbundled Loop with LNP, the FDT must be agreed upon, the interval to reach agreement will not exceed two (2) Days from receipt of an accurate LSR. In addition, standard intervals will apply.

9.2.2.9.7.2 CLEC shall request a Project Coordinated Installation by submitting a Local Service Request (LSR) and designating this order as a Project Coordinated Installation in the remarks section of the LSR form.

9.2.2.9.7.3 CLEC will incur additional charges for the Project Coordinated Installation dependent upon the coordinated time. The rates are based upon whether the request is within Qwest's normal business hours or Out Of Hours. Qwest normal business hours for Unbundled Loops are 8:00 a.m. to 5:00 p.m., Monday through Friday. The rates for coordinated installations are set forth in Exhibit A. Where LNP is included, see Section 10.2.5.4 for rate elements.

9.2.2.9.7.4 Qwest will schedule the appropriate number of employees prior to the cut, normally not to exceed four employees, based upon information provided by CLEC. If the Project Coordinated Installation includes LNP, CLEC will also have appropriate personnel scheduled for the negotiated FDT. If CLEC's information is modified during the installation, and, as a result, non-scheduled employees are required, CLEC shall be charged a three (3) hour minimum callout charge per each additional non-scheduled employee. If the installation is either cancelled, or supplemented (supp) to change the Due Date, within twenty-four (24) hours of the negotiated FDT, CLEC will be charged a one person three (3) hour minimum charge. For Project Coordinated

Installations with LNP, if the Coordinated Installation is cancelled due to a Qwest error or a new Due Date is requested by Qwest, within twenty-four (24) hours of the negotiated FDT, Qwest may be charged by CLEC one person three (3) hour minimum charge as set forth in Exhibit A.

9.2.2.9.7.5 If CLEC orders Project Coordinated Installation with LNP and in the event the LNP conversion is not successful, CLEC and Qwest agree to isolate and fix the problem in a timeframe acceptable to CLEC or the Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the Customer, CLEC may request the restoral of Qwest service for the ported Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Qwest. If Qwest is in error, no supplemental order or additional order will be required of CLEC.

9.2.2.9.7.6 If CLEC orders Project Coordinated Installation with LNP, Qwest shall ensure that any LNP order activity requested in conjunction with a Project Coordinated Installation shall be implemented in a manner that avoids interrupting service to the end user.

9.2.2.9.8 Intentionally Left Blank.

9.2.2.9.9 Intentionally Left Blank.

9.2.2.9.10 For loop installations requiring a Qwest technician dispatch, Qwest will note the demarcation location (for designed service circuits) and CLEC may access such information via CEMR. The applicable PCAT for Business Procedure contains additional information.

9.2.2.9.11 If at any time during the Provisioning process or during the first thirty (30) business days following Qwest's notification of completion, either Qwest or CLEC may request a joint meet at either the NID or Central Office to perform cooperative trouble isolation. If no trouble is found in Qwest's network, a Maintenance of Service Charge will apply pursuant to Exhibit A. If trouble is found in Qwest's network, CLEC will be credited the Maintenance of Service charge or CLEC's actual cost, whichever is less, pursuant to Section 12.3.4.4.

9.2.2.10 Multiplexing. Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. Except as specifically set forth in Section 9.2, CLEC may order multiplexing, including conversion from special access or private line circuits, for Unbundled Loops under the rates, terms and conditions for multiplexing of Enhanced Extended Loop (EEL), in Section 9.23.3.9 of this Agreement. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.2.11 In order to properly maintain and modernize the network, Qwest may make necessary modifications and changes to Unbundled Loops, ancillary and Finished Services in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Changes that affect network Interoperability require advance notice pursuant to the Notices Section of this Agreement.



9.2.2.12 If there is a conflict between an end user(or its respective agent) and CLEC regarding the disconnection or Provisioning of Unbundled Loops, Qwest will advise the end user to contact CLEC, and Qwest will initiate contact with CLEC.

(a) Reserved for Future Use.

(b) Reserved for Future Use.

9.2.2.13 Facilities and lines Qwest furnishes on the premises of CLEC's end user up to and including the Loop Demarcation Point are the property of Qwest. Qwest shall have reasonable access to all such facilities for network management purposes. Qwest will coordinate entry dates and times with appropriate CLEC personnel to accommodate testing, inspection repair and maintenance of such facilities and lines. CLEC will not inhibit Qwest's employees and agents from entering said premises to test, inspect, repair and maintain such facilities and lines in connection with such purposes or, upon termination or cancellation of the Unbundled Loop service, to remove such facilities and lines. Such entry is restricted to testing, inspection, repair and maintenance of Qwest's property in that facility. Entry for any other purpose is subject to audit provisions in the Audit section of this Agreement.

9.2.2.14 Reserved for Future Use.

9.2.2.15 Reuse of Loop Facilities.

9.2.2.15.1 When an end user contacts Qwest with a request to convert their local service from CLEC to Qwest, Qwest will notify CLEC of the loss of the end user, and will disconnect the Loop Qwest provided to CLEC. Qwest will disconnect the Loop only where Qwest has obtained proper Proof of Authorization.

9.2.2.15.2 When CLEC contacts Qwest with a request to convert an end user from their current CLEC (old CLEC) to them (new CLEC), new CLEC is responsible for notifying old CLEC of the conversion. Qwest will disconnect the Loop Qwest provided old CLEC and, at new CLEC request, where technically compatible, will reuse the Loop for the service requested by new CLEC (e.g., resale service).

9.2.2.15.3 When CLEC contacts Qwest with a request to convert an end user from Qwest to CLEC, at CLEC request, Qwest will reuse the existing Loop facilities for the service requested by CLEC to the extent those facilities are technically compatible with the service to be provided. Upon CLEC request, Qwest will condition the existing Loop in accordance with the rates set forth in Exhibit A.

9.2.2.15.4 Upon completion of the disconnection of the Loop, Qwest will send a Loss Notification report to the original competitive Carrier signifying completion of the loss.

9.2.2.15.5 In all loop reuse scenarios where the facility is re-used "AS IS", Qwest shall take all steps necessary to ensure all services being provided on the loop are transitioned to the new provider with minimal service interruption to the

end user. This applies to both voice and data services.

### 9.2.3 Rate Elements

The following recurring and nonrecurring rates for Unbundled Loops are set forth in Exhibit A of this Agreement. Recurring charges vary based on CLEC selected installation options, conditioning, and extension technology.

9.2.3.1 2/4 Wire Analog Loop (Voice Grade) Recurring and Nonrecurring rates.

9.2.3.2 2/4 Wire Non-Loaded Loop Recurring and Nonrecurring rates.

9.2.3.3 DS1 and DS3 Capable Loop, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop Recurring and Nonrecurring rates.

9.2.3.3.1 DS0, DS1 and DS3 Capable Loop Conversion Nonrecurring rates associated with the conversion of special access or private lines to Unbundled Loops.

9.2.3.4 Extension Technology Recurring and Nonrecurring rates for Digital Capable Loops, including Basic Rate (BRI) ISDN and xDSL-I Capable Loops.

9.2.3.5 Conditioning Nonrecurring rates 2/4 wire non-loaded Loops, Basic Rate (BRI) ISDN, ADSL Compatible Loop and xDSL-I Capable Loop, as requested and approved by CLEC.

9.2.3.6 Miscellaneous Charges, as defined in Sections 4 and 9.1.12, may apply.

9.2.3.7 Out of Hours Coordinated Installations.

9.2.3.7.1 For purposes of service installation, Qwest's installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

9.2.3.7.2 Intentionally Left Blank.

9.2.3.7.3 Intentionally Left Blank.

9.2.3.7.4 Intentionally Left Blank.

9.2.3.7.5 For coordinated installations scheduled to commence Out of Hours, or rescheduled by CLEC to commence Out of Hours, CLEC will incur additional charges for the Out of Hours coordinated installation as set forth in Exhibit A.

### 9.2.4 Ordering Process

9.2.4.1 Unbundled Loops are ordered via an LSR. Ordering processes are contained in the Support Functions Section of this Agreement. Detailed ordering processes are found on the Qwest wholesale website.

9.2.4.2 Prior to placing orders on behalf of the end user, CLEC shall be

responsible for obtaining and have in its possession a Proof of Authorization.

9.2.4.3 Based on the pre-order Loop make-up, CLEC may be able to determine if the circuit can meet the technical parameters for the specific service CLEC intends to offer.

9.2.4.3.1 Before submitting an order for a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop or xDSL-I capable Loop, CLEC should use one of Qwest's Loop make-up tools available via IMA-EDI, IMA-GUI, or the web-based application interface to obtain specific information about the Loop CLEC seeks to order. However, CLEC is entitled to submit an LSR regardless of whether it has utilized or in any way prequalified such loop using any of Qwest's available loop prequalification tools or any information or databases Qwest has made available to CLEC for purposes of obtaining loop qualification information.

9.2.4.3.1.1 Based on the Loop make up information provided through Qwest tools, CLEC may determine whether conditioning is required to provide the xDSL service it intends to offer. If Loop conditioning is required, CLEC may authorize Qwest to perform such Loop conditioning on its Local Service Request (LSR) by entering a "Y" in the SCA field of the LSR. If CLEC does not pre-approve Loop conditioning, Qwest will assume that CLEC has determined that Loop conditioning is not necessary to provide the xDSL service CLEC seeks to offer. If CLEC does not pre-approve conditioning and no conditioning is required to provision the request, the service request will flow through the provisioning process. If CLEC or Qwest determines that conditioning is necessary, and CLEC authorizes Qwest to perform the conditioning, Qwest will perform the conditioning. CLEC will be charged for the conditioning in accordance with the rates in Exhibit A, if applicable. If Qwest determines that conditioning is necessary and CLEC has not previously authorized Qwest to perform the conditioning on the LSR, Qwest will send CLEC a rejection notice indicating the need to obtain approval for conditioning. CLEC must submit a revised LSR before the conditioning work will commence. Once Qwest receives the revised LSR, the fifteen (15) business day conditioning interval will begin as described in Section 9.2.4.9.

9.2.4.3.1.2 For a 2/4 wire non-loaded Loop, ADSL compatible Loop, ISDN capable Loop, xDSL-I capable Loop, or DS1 capable Loop Qwest will return a Firm Order Confirmation (FOC) to CLEC within seventy-two (72) hours from receipt of a valid and accurate LSR. Return of such FOC will indicate that Qwest has identified a Loop assignment. Such FOC will provide CLEC with a firm Due Date commitment. If appropriate facilities are not available to fill CLEC's order, a jeopardy notification will be issued.

9.2.4.3.1.2.1 If CLEC has pre-approved Loop conditioning, and conditioning is not necessary, Qwest will return the FOC with the standard interval identified in Exhibit C.

9.2.4.3.1.2.2 If CLEC has not pre-approved Loop conditioning and Qwest determines that the Loop contains load coils, Qwest will notify CLEC via a reject notification. CLEC must submit a new version of the LSR approving Loop conditioning. In this scenario, the Application Date will correspond to date the new version is received by Qwest.

9.2.4.3.1.2.3 Reserved for Future Use.

9.2.4.3.1.2.4 Reserved for Future Use.

9.2.4.3.2 Qwest will not reject any order for any 2/4 Wire non-loaded Loop based on dB loss or loop length, including but not limited to loop length contained in databases or records containing loop make-up information, loop length based on equivalent loop length as determined by a Mechanized Loop Test (MLT).

9.2.4.4 Installation intervals for all Unbundled Loops are defined in Exhibit C. The interval will start when Qwest receives a complete and accurate LSR. The LSR date is considered the start of the service interval if the order is received prior to 7:00 p.m. For service requests received after 7:00 p.m., the service interval will begin on the next business day.

9.2.4.4.1 When CLEC places an order for an Unbundled Loop with Qwest that is complete and accurate, Qwest will reply to CLEC with a Firm Order Confirmation within the time specified in Section 20. The Firm Order Confirmation will contain the Due Date that specifies the date on which Qwest will provision the Loop. Qwest will implement adequate processes and procedures to assure the accuracy of the commitment date. If Qwest must make changes to the commitment date, Qwest will promptly issue a jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also submit a new Firm Order Confirmation that will clearly identify the new Due Date.

9.2.4.5 Installation intervals for Unbundled Loops apply when Qwest has facilities or network capacity available.

9.2.4.6 Upon CLEC request, Qwest will convert special access or private line circuits to Unbundled Loops, with or without multiplexing, provided the service originates at the CLEC Collocation in the Serving Wire Center. If multiplexing is not involved, then the Loop conversion ordering process applies. However, if the conversion includes multiplexing, then the ordering process associated with the conversion to EELs applies. The requirements with respect to providing a significant amount of local exchange traffic under Section 9.23.3.7 shall not apply to conversions to Unbundled Loop.

9.2.4.7 Reserved for Future Use.

9.2.4.8 When ordering Unbundled Loops, CLEC is responsible for obtaining or providing facilities and equipment that are compatible with the service CLEC seeks to provide.

9.2.4.9 The installation interval for xDSL Loops depends on the need to

condition the Loop.

9.2.4.9.1 When load coils and Bridged Taps do not exist, CLEC may request the standard Due Date interval, which will apply upon submission of a complete and accurate LSR.

9.2.4.9.2 When load coils and/or excessive Bridged Taps do exist, CLEC will request the minimum fifteen (15) business days desired Due Date. CLEC can determine the existence of load coils or Bridged Taps by using one of the Loop make-up tools. CLEC may pre-approve line conditioning on the LSR and, by doing so, CLEC agrees to pay any applicable conditioning charges. If CLEC did not request the fifteen (15) Day interval and Qwest determines that conditioning is required, then the fifteen (15) business day interval starts when the need for conditioning is identified and CLEC approves the conditioning charges.

#### 9.2.4.10 Out of Hours Coordinated Installations.

9.2.4.10.1 For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Installations requested outside of these hours are considered to be Out of Hours Installations.

9.2.4.10.2 CLEC may request an Out of Hours Coordinated Installation outside of Qwest's standard installation hours.

9.2.4.10.3 To request Out of Hours Coordinated Installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an Out of Hours Coordinated Installation in the Remarks section of the LSR.

9.2.4.10.4 The date and time for Out of Hours Coordinated Installations may need to be negotiated between Qwest and CLEC because of system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same appointment times in the same Switch (Switch contention).

### 9.2.5 Maintenance and Repair

9.2.5.1 CLEC is responsible for its own end user base and will have the responsibility for resolution of any service trouble report(s) from its end users. CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the NID, the Loop Demarcation Point or any other accessible test point that is a Demarcation Point between Qwest's and CLEC's networks. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. For Unbundled Loops, each party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 9.2.5.1, 9.2.5.2 and 9.2.5.3.

9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the end user's

side of the Loop Demarcation Point. If the trouble is on the end user's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the Maintenance of Service charge.

9.2.5.3 When CLEC elects not to perform trouble isolation and Qwest performs tests on the Unbundled Loop at CLEC's request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities. Maintenance and Repair processes are set forth in Section 12.3 of this Agreement. Maintenance of Service charges are set forth in Exhibit A.

9.2.5.3(a) Prior to closing out any trouble ticket, Qwest will contact CLEC and confirm with CLEC testing personnel that the trouble has been resolved or that there is no trouble on the line.

9.2.5.4 Qwest will maintain detailed records of trouble reports of CLEC-ordered Unbundled Loops comparing CLEC provided data with internal data, and evaluate such reports on at a minimum of a quarterly basis to determine the cause of Loop problems. Qwest will conduct a quarterly root cause analysis of problems associated with UNE Loops provided to CLECs by Qwest. Based on this analysis, Qwest will take corrective measure to fix persistent and recurrent problems, reporting to CLECs on the analysis and the process changes that are instituted implemented to fix the problems.

9.2.5.5 Qwest shall allow access to the NID for testing purposes where access at the Demarcation Point is not adequate to allow testing sufficient to isolate troubles; in the event that Qwest chooses not to allow such access, it shall waive any trouble isolation charges that may otherwise be applicable.

## 9.2.6. Spectrum Management

9.2.6.1 Qwest will provide 2/4 Wire non-loaded Loops, ADSL compatible Loops, ISDN capable Loops, xDSL-I capable Loops, DS1 capable Loops and DS3 capable Loops (collectively referred to in this Section 9.2.6 as "xDSL Loops") in a non-discriminatory manner to permit CLEC to provide Advanced Services to its End User Customer. Such Loops are defined herein and are in compliance with FCC requirements and guidelines recommended by the Network Reliability and Interoperability Council (NRIC) to the FCC, such as guidelines set forth in T1-417.

9.2.6.2 When ordering xDSL Loops, CLEC will provide Qwest with appropriate information using NC/NCI codes, (as required by the FCC), to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. Qwest will treat such information provided by CLEC as confidential and proprietary information. CLEC also agrees to notify Qwest of any change in Advanced Services technology that results in a change in spectrum management class on the xDSL Loop. Qwest agrees CLEC need not provide the speed or power at which the newly deployed or changed technology will operate if the technology fits within a generic PSD mask. Qwest will only use this information for network spectrum management purposes and will not provide this information, either by individual CLEC or in the aggregate, to marketing personnel. Qwest agrees to provide CLECs with information concerning Qwest's spectrum management procedures and policies, the number of Loops using Advanced Services within a binder group, and the types of technologies used on those Loops.

9.2.6.2.1 CLEC information provided to Qwest pursuant to Section 9.2.6.2 shall be deemed Confidential Information and Qwest may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections of 9.2.6.2.

9.2.6.2.2 The Parties may disclose, on a need to know basis only, CLEC Confidential Information provided pursuant to Section 9.2.6.2, to legal personnel, if a legal issue arises, as well as to network and growth planning personnel responsible for spectrum management functions. In no case shall the aforementioned personnel who have access to such Confidential Information be involved in Qwest's retail marketing, sales or strategic planning.

9.2.6.3 If CLEC wishes to deploy new technology not yet designated with a PSD mask, Qwest and CLEC agree to work cooperatively to determine spectrum compatibility. Qwest and CLEC agree, as defined by the FCC, that technology is presumed acceptable for deployment when it complies with existing industry standards, is approved by a standards body or by the FCC or Commission, or if technology has been deployed elsewhere without a "significant degradation of service".

9.2.6.4 Qwest recognizes that the analog T1 service traditionally used within its network is a "known Disturber" as designated by the FCC. Qwest will place such T1s, by whomever employed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is Technically Feasible, replace its T1s with a technology that will eliminate undue interference problems. Qwest also agrees that any future "known Disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

9.2.6.5 If either Qwest or CLEC claims a service is significantly degrading the performance of other Advanced Services or traditional voice band services, then that Party must notify the causing Carrier and allow the causing Carrier a reasonable opportunity to correct the problem. Upon notification, the causing Carrier shall promptly take action to bring its facilities/technology into compliance with industry standards. Upon request, within forty-eight (48) hours, Qwest will provide CLEC with binder group information including cable, pair, Carrier and PSD class to allow CLEC to notify the causing Carrier.

9.2.6.6 If CLEC is unable to isolate trouble to a specific pair within the binder group, Qwest, upon receipt of a trouble resolution request, will perform a main frame pair by pair analysis and provide results to CLEC within five (5) business days.

9.2.6.7 Reserved for Future Use.

9.2.6.8 Qwest will not have the authority to unilaterally resolve any dispute over spectral interference among Carriers. Qwest shall not disconnect Carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the interfering Carrier or Qwest is ordered to do so by the Commission or other authorized dispute resolution body. CLEC may submit any claims for resolution under Section 5.18 of this Agreement.

9.2.6.9 Where CLEC demonstrates to Qwest that it has deployed Central Office

based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other Customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other Customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this Agreement.

## 9.3 Subloop Unbundling

### 9.3.1 Description

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9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis, pursuant to Section 251 of the Act, to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access, pursuant to Section 251 of the Act, to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 of the Act and other Applicable Law. This section does not address Dark Fiber Subloop which is addressed in Section 9.7.

9.3.1.1.1 Building terminals within or physically attached to a privately owned building in a Multi-Tenant Environment (MTE) are one form of accessible terminal. Throughout Section 9.3 the Parties obligations around such "MTE terminals" are segregated because Subloop terms and conditions differ between MTE environments and non-MTE environments.

9.3.1.1.2 For any configuration not specifically addressed in this Agreement, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any Collocation or other Provisioning requiring Qwest



performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.

9.3.1.1.3 Any party may request, under any procedure provided for by this Agreement for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.

9.3.1.1.4 Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in Section 9.3.1.1.2 above only those requirements or intervals that are reasonably necessary.

9.3.1.1.4.1 MTE Terminals: Accessible terminals within a building in a MTE environment or accessible terminals physically attached to a building in a MTE environment. Qwest Premises located on real property that constitutes a campus environment, yet are not within or physically attached to a non-Qwest owned building, are not considered MTE Terminals.

9.3.1.1.4.2 Detached Terminals: All accessible terminals other than MTE Terminals.

9.3.1.2 Standard Subloops available.

a) Two-Wire/Four Wire Unbundled Distribution Loop

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b) DS1 Capable Unbundled Feeder Loop

c) Two-Wire/Four Wire Non-loaded Distribution Loop

d) Intrabuilding Cable Loop

9.3.1.3 Standard Subloop Access

9.3.1.3.1 Accessing Subloops in Detached Terminals: Subloop Unbundling is available after a CLEC requested Field Connection Point (FCP) has been installed within or adjacent to the Qwest accessible terminal. The FCP is a Demarcation Point connected to a terminal block from which Cross Connections are run to Qwest Subloop elements.

9.3.1.3.2 Accessing Subloops in MTE Terminals: Subloop Unbundling is available after CLEC has notified Qwest of its intention to Subloop unbundle in the MTE, during or after an inventory of CLEC's terminations has been created, and CLEC has constructed a cross-connect field at the building terminal.

9.3.1.3.2.1 Reserved for Future Use.

9.3.1.3.2.2 Reserved for Future Use.

#### 9.3.1.4 Field Connection Point

9.3.1.4.1 Field Connection Point (FCP) is a Demarcation Point that allows CLEC to interconnect with Qwest outside of the Central Office location where it is Technically Feasible. The FCP interconnects CLEC facilities to a terminal block within the accessible terminal. The terminal block allows a technician to access and combine Unbundled Subloop elements. When a FCP is required, it must be in place before Subloop orders are processed.

9.3.1.4.2 Placement of a FCP within a Qwest Premises for the sole purpose of creating a cross-connect field to support Subloop unbundling constitutes a "Cross-Connect Collocation."

9.3.1.4.2.1 The terms, conditions, intervals and rates for Cross-Connect Collocation are found within section 9.3.

9.3.1.4.2.2 To the extent that CLEC places equipment in a Qwest Premises that requires power and or heat dissipation, such Collocation is governed by the Terms of Section 8 and does not constitute a Cross-Connect Collocation.

9.3.1.4.3 A FCP arrangement can be established either within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when Technically Feasible, CLEC may place the FCP in an adjacent terminal. CLEC will have access to the equipment placed within the Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.

#### 9.3.1.5 MTE Point of Interconnection (MTE-POI)

9.3.1.5.1 A MTE-POI is necessary when CLEC is obtaining access to the Distribution Loop or Intrabuilding Cable Loop from an MTE Terminal. CLEC must create the cross-connect field at the building terminal that will allow CLEC to connect its facilities to Qwest's Subloops. The Demarcation Point between CLEC and Qwest's facilities is the MTE-POI.

9.3.1.6 Once a state has determined that it is Technically Feasible to unbundle Subloops at a designated accessible terminal, Qwest shall either agree to unbundle at such access point or shall have the burden to demonstrate, pursuant to the dispute resolution provisions of this Agreement, that it is not Technically Feasible, or that sufficient space is not available to unbundle Subloop elements at such accessible terminal.

9.3.1.7. Qwest shall provide access to additional Subloop elements (e.g., copper feeder) to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.

## 9.3.2 Standard Subloops Available

### 9.3.2.1 Distribution Loops

9.3.2.1.1 Two-Wire/Four-Wire Unbundled Distribution Loop: a Qwest provided facility from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for local exchange-type services. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.2 Two-Wire/Four-Wire Non-Loaded Distribution Loop: a Qwest provided facility without load coils and excess Bridged Taps from the Qwest accessible terminal to the Demarcation Point or Network Interface Device (NID) at the end user location. When CLEC requests a Non-Loaded Unbundled Distribution Loop and there are none available, Qwest will contact CLEC to determine if CLEC wishes to have Qwest unload a Loop. If the response is affirmative, Qwest will dispatch a technician to "condition" the Distribution Loop by removing load coils and excess Bridged Taps (i.e., "unload" the Loop). CLEC may be charged the cable unloading and Bridged Taps removal nonrecurring charge in addition to the Unbundled Loop installation nonrecurring charge. If a Qwest technician is dispatched and no load coils or Bridged Taps are removed, the nonrecurring conditioning charge will not apply. CLEC can obtain access to this Unbundled Element at any Technically Feasible accessible terminal.

9.3.2.1.3 Intrabuilding Cable Loop: a Qwest provided facility from the building terminal inside a MTE to the Demarcation Point at the End User Customer premises inside the same building. This Subloop element only applies when Qwest owns the intrabuilding cable.

9.3.2.1.4 To the extent CLEC accesses Subloop in a campus environment from an accessible terminal that serves multiple buildings, CLEC can access these Subloops by ordering a Distribution Loop pursuant to either Section 9.3.2.1.1 or 9.3.2.1.2. A campus environment is one piece of property, owned by one person or entity, on which there are multiple buildings.

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9.3.2.2.1 Intentionally Left Blank

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9.3.2.2 Feeder Loops

9.3.2.2.1 DS1 Capable Unbundled Feeder Loop is a digital transmission

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path that is provisioned from a Qwest Central Office network interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal. The DS1 Capable Unbundled Feeder Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s.

### 9.3.3 MTE Terminal Subloop Access: Terms and Conditions

9.3.3.1 Access to Distribution Loops or Intrabuilding Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, as defined in Section 9.3, refers to creation of a cross connect field and does not constitute Collocation as defined in Section 8. The terms and conditions of Section 8 do not apply to Cross-Connect Collocation if required at or near an MTE.

9.3.3.2 To obtain such access, CLEC shall complete the "MTE-Access Ordering Process" set forth in Section 9.3.5.4.

9.3.3.3 The optimum point and method to access Subloop elements will be determined during the MTE Access Ordering Process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security. CLEC may access the MTE Terminal as a test access point.

9.3.3.4 CLEC will work with the MTE building owner to determine where to terminate its facilities within the MTE. CLEC will be responsible for all work associated with bringing its facilities into and terminating the facilities in the MTE. CLEC shall seek to work with the building owner to create space for such terminations without requiring Qwest to rearrange its facilities.

9.3.3.5 If there is space in the building for CLEC to enter the building and terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space. In such circumstances, an inventory of CLEC's terminations within the MTE shall be input into Qwest's systems to support Subloop orders before Subloop orders are provisioned or in conjunction with the first Subloop order in the MTE. Qwest shall have five (5) calendar Days from receipt of a written request from CLEC, in addition to the interval set forth in Section 9.3.5.4.1, to input the inventory of CLEC's terminations into its systems. Qwest may seek an extended interval if the work cannot reasonably be completed within the stated interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain the extended interval. If CLEC submits a Subloop order before Qwest inputs the inventory into its systems, Qwest shall process the order in accord with Section 9.3.5.4.1.

9.3.3.6 If CLEC connects Qwest's Subloop element to CLEC's facilities using any temporary wiring or cut-over devices, CLEC shall remove any remaining temporary wiring or cut-over devices and install permanent wiring within ninety (90) calendar Days. All wiring arrangements, temporary and permanent, must adhere to the National Electric Code.

9.3.3.7 If there is no space for CLEC to place its building terminal or no accessible terminal from which CLEC can access such Subloop elements, and Qwest and CLEC are unable to negotiate a reconfigured Single Point of Interconnection (SPOI) to serve the MDU, Qwest will either rearrange facilities to make room for CLEC or construct a single point of access that is fully accessible to and suitable for CLEC. Qwest's obligation to construct a SPOI is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE. In addition, Qwest shall have an obligation only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI. In such instances, CLEC shall pay Qwest a nonrecurring charge, which shall be ICB, based on the scope of the work required. If CLEC requests that a new SPOI be established, then CLEC shall pay Qwest a nonrecurring charge that shall be ICB, based on the scope of the work required. If the MTE terminal is hard wired in such a manner that a network Demarcation Point cannot be created, Qwest will rearrange the terminal to create a cross-connect field and Demarcation Point. Charges for such rearrangement shall be recovered through recurring termination charges.

9.3.3.7.1 If Qwest must rearrange its MTE Terminal to make space for CLEC, Qwest shall have forty-five (45) calendar Days from receipt of a written request from CLEC to complete the rearrangement. Qwest may seek an extended interval if the work cannot reasonably be completed within forty-five (45) calendar Days. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

9.3.3.7.2 If Qwest must construct a new detached terminal that is fully accessible to and suitable for CLEC, the interval for completion shall be negotiated between the Parties on an Individual Case Basis.

9.3.3.7.3 CLEC may cancel a request to construct an FCP or SPOI prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest as well as any costs necessary to restore the property to its original condition.

9.3.3.8 At no time shall either Party rearrange the other Party's facilities within the MTE or otherwise tamper with or damage the other Party's facilities within the MTE. This does not preclude normal rearrangement of wiring or jumpers necessary to connect inside wire or intrabuilding cable to CLEC facilities in the manner described in the MTE Access Protocol. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

#### **9.3.4 Detached Terminal Subloop Access: Terms and Conditions**

9.3.4.1 Except as to access at an MTE Terminal, access to unbundled Subloop elements at an accessible terminal must be made through a Field Connection Point

(FCP) in conjunction with either a Cross-Connect Collocation or, if power and/or heat dissipation is required, a Remote Collocation.

9.3.4.2 To the extent that the accessible terminal does not have adequate capacity to house the network interface associated with the FCP, CLEC may opt to use Adjacent Collocation to the extent it is Technically Feasible. Such adjacent access shall comport with NEBS Level 1 safety standards

9.3.4.2.1 Reserved for Future Use.

9.3.4.3 Field Connection Point

9.3.4.3.1 Qwest is not required to build additional space for CLEC to access Subloop elements. When Technically Feasible, Qwest shall allow CLEC to construct its own structure adjacent to Qwest's accessible terminal. CLEC shall obtain any necessary authorizations or rights of way required (which may include obtaining access to Qwest rights of way, pursuant to section 10.8 of this Agreement) and shall coordinate its facility placement with Qwest, when placing their facilities adjacent to Qwest facilities. Obstacles that CLEC may encounter from cities, counties, electric power companies, property owners and similar third parties, when it seeks to interconnect its equipment at Subloop access points, will be the responsibility of CLEC to resolve with the municipality, utility, property owner or other third party.

9.3.4.3.2 The optimum point and method to access Subloop elements will be determined during the Field Connection Point process. The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security.

9.3.4.3.3 CLEC must identify the size and type of cable that will be terminated in the Qwest FCP location. Qwest will terminate the cable in the Qwest accessible terminal if termination capacity is available. If termination capacity is not available, Qwest will expand the FDI at the request of CLEC if Technically Feasible, all reconfiguration costs to be borne by CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. It will be the responsibility of Qwest to seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision the Collocation. CLEC will be responsible for placing the cable from the Qwest FCP to its equipment. Qwest will perform all of the initial splicing at the FCP.

9.3.4.3.4 CLEC may cancel a Collocation associated with a FCP request prior to Qwest completing the work by submitting a written notification via certified mail to its Qwest account manager. CLEC shall be responsible for payment of all costs previously incurred by Qwest.

9.3.4.3.5 If the Parties are unable to reach an agreement on the design of the FCP through the Field Connection Point Process, the Parties may utilize the Dispute Resolution process pursuant to the Terms and Conditions Dispute

Resolution Section. Alternatively, CLEC may seek arbitration under Section 252 of the Act with the Commission, wherein Qwest shall have the burden to demonstrate that there is insufficient space in the accessible terminal to accommodate the FCP, or that the requested Interconnection is not Technically Feasible.

9.3.4.4 At no time shall either Party rearrange the other Party's facilities within the accessible terminal or otherwise tamper with or damage the other Party's facilities. If such damage accidentally occurs, the Party responsible for the damage shall immediately notify the other and shall be financially responsible for restoring the facilities and/or service to its original condition. Any intentional damage may be reported to the proper authorities and may be prosecuted to the full extent of the law.

### 9.3.5. Ordering/Provisioning

#### 9.3.5.1 All Subloop Types

9.3.5.1.1 CLEC may order Subloop elements through the Operational Support Systems described in Section 12.

9.3.5.1.2 CLEC shall identify Subloop elements by NC/NCI codes.

#### 9.3.5.2 Additional Terms for Detached Terminal Subloop Access

9.3.5.2.1 CLEC may only submit orders for Subloop elements after the FCP is in place. The FCP shall be ordered pursuant to Section 9.3.5.5. CLEC will populate the LSR with the termination information provided at the completion of the FCP process.

9.3.5.2.2 Qwest shall dispatch a technician to run a jumper between its Subloop elements and CLEC's Subloop elements. CLEC shall not at any time disconnect Qwest facilities or attempt to run a jumper between its Subloop elements and Qwest's Subloop elements without specific written authorization from Qwest.

9.3.5.2.3 Once the FCP is in place, the Subloop Provisioning intervals contained in Exhibit C shall apply.

#### 9.3.5.3 Reserved for Future Use.

#### 9.3.5.4 Additional Terms for MTE Terminal Subloop Access - MTE-Access Ordering Process

9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing, including via email, of its intention to provide access to Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar Days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership communicated to another CLEC at the same MTE, Qwest shall provide such notification to requesting CLEC within two (2) business days. In the event that CLEC provides

Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the Customer side of the terminal, the preceding ten (10) Day period shall be reduced to five (5) calendar Days from Qwest's receipt of such claim.

9.3.5.4.2 If the MTE owner owns the facilities on the Customer side of the terminal, CLEC may obtain access to all facilities in the building in accordance with Section 9.5 concerning access to unbundled NIDs.

9.3.5.4.3 If Qwest owns the facilities on the Customer side of the terminal, and if CLEC requests space to enter the building and terminate its facilities and Qwest must rearrange facilities or construct new facilities to accommodate such access, CLEC shall notify Qwest. Upon receipt of such notification, the intervals set forth in Section 9.3.3 shall begin.

9.3.5.4.4 CLEC may only submit orders for Subloop elements after the facilities are rearranged and/or a new facility constructed, if either are necessary. CLEC will populate the LSR with the termination information provided by CLEC at the completion of the inventory process except when submitting LSRs during the creation of the inventory.

9.3.5.4.5 If CLEC orders Intrabuilding Cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI in accordance with the MTE Access Protocol. If CLEC ordered a Subloop type other than Intrabuilding Cable Loop, Qwest will dispatch a technician to run a jumper between CLECs Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI. CLEC, at its option, may request that Qwest run the jumper for Intrabuilding cable in MTEs when the inventory is done and a complete LSR has been submitted.

9.3.5.4.5.1 When CLEC accesses a MTE Terminal, it shall employ generally accepted best engineering practices in accordance with industry standards. CLEC shall clearly label the cross-connect wires it uses. CLEC wiring will be neatly dressed. When CLEC accesses Subloops in MTE Terminals, it shall adhere to Qwest's Standard MTE Terminal Access Protocol unless the Parties have negotiated a separate document for such Subloop access. If CLEC requests a MTE Terminal access protocol that is different from Qwest's Standard MTE Terminal Access Protocol, Qwest shall negotiate with CLEC promptly and in good faith toward that end.

9.3.5.4.5.2 Reserved for Future Use.

9.3.5.4.5.2.1 Reserved for Future Use.

9.3.5.4.5.2.2 Reserved for Future Use.

9.3.5.4.5.2.3 Reserved for Future Use.

9.3.5.4.5.2.4 Reserved for Future Use.



9.3.5.4.6 Once inventory is complete and, if necessary, the facilities are rearranged and or a new facility constructed and when Qwest runs the jumper, the Subloop Provisioning intervals contained in Exhibit C shall apply.

9.3.5.4.7 For access to Qwest's on-Premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

#### 9.3.5.5 FCP Ordering Process

9.3.5.5.1 CLEC shall submit a Field Connection Point Request Form to Qwest along with its Collocation Application. The FCP Request Form shall be completed in its entirety.

9.3.5.5.2 After construction of the FCP and Collocation are complete, CLEC will be notified of its termination location, which will be used for ordering Subloops.

9.3.5.5.2.1 The following constitute the intervals for Provisioning Collocation associated with a FCP, which intervals shall begin upon completion of the FCP Request Form and its associated Collocation Application in their entirety:

9.3.5.5.2.1.1 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in Section 8.4.

9.3.5.5.2.1.2 A Cross-Connect Collocation in a detached terminal shall be provisioned within ninety (90) calendar Days from receipt of a written request by CLEC.

9.3.5.5.2.1.3 If Qwest denies a request for Cross-Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) calendar Days of CLECs receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Cross-Connect Collocation Application Date for determining RFS unless both Parties agree to a revised date.

9.3.5.5.2.1.4 Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, CLEC can request testing of the FCP at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the Cross-Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) calendar Days of the RFS, Qwest shall activate the applicable charges.

9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

### 9.3.6 Rate Elements

#### 9.3.6.1 All Subloop Types

9.3.6.1.1 Subloop Recurring Charge - CLEC will be charged a monthly recurring charge pursuant to Exhibit A for each Subloop ordered by CLEC.

9.3.6.1.2 Subloop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the Support Functions – Maintenance and Repair Section when trouble is reported but not found on the Qwest facility.

#### 9.3.6.2 Reserved for Future Use.

#### 9.3.6.3 Additional rates for Detached Terminal Subloop Access:

9.3.6.3.1 Cross-Connect Collocation Charge: CLEC shall pay the full nonrecurring charge for creation of the Cross-Connect Collocation set forth in Exhibit A upon submission of the Collocation Application. The FCP Request Form shall not be considered completed in its entirety until complete payment is submitted to Qwest.

9.3.6.3.2 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the rate elements set forth in Section 8.3.

9.3.6.3.3 Subloop Nonrecurring Jumper Charge: CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

#### 9.3.6.4 Additional Rates for MTE Terminal Subloop Access

9.3.6.4.1 Subloop Nonrecurring Charge - CLEC will be charged a nonrecurring charge for the time and materials required for Qwest to complete the inventory of CLEC's facilities within the MTE such that Subloop orders can be submitted and processed.

9.3.6.4.2 Subloop Nonrecurring Jumper Charge – If CLEC ordered a Subloop type other than Intrabuilding Cable Loop, CLEC will be charged a nonrecurring basic installation charge for Qwest running jumpers within the accessible terminal pursuant to Exhibit A for each Subloop ordered by CLEC.

### 9.3.7 Repair and Maintenance

9.3.7.1 Detached Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the accessible terminal and CLEC will maintain all of its facilities and equipment in the accessible terminal.

9.3.7.2 MTE Terminal Subloop Access: Qwest will maintain all of its facilities and equipment in the MTE and CLEC will maintain all of its facilities and equipment in the MTE.

## 9.4 Line Sharing

### 9.4.1 Description

Line Sharing provides CLEC with the opportunity to offer advanced data services simultaneously with an existing end user's analog voice-grade (POTS) service on a single copper Loop referred to herein as the "Shared Loop" or "Line Sharing", by using the frequency range above the voice band on the copper portion of the Loop. This frequency range will be referred to herein as the High Frequency Spectrum Network Element (HUNE). A POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous data transmission and POTS service. The POTS service must be provided to the end user by Qwest. This section does not prohibit Line Splitting, which is addressed in Section 9.21.

9.4.1.1 To the extent additional line sharing technologies and transport mechanisms are specified by applicable FCC rules, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access. Qwest also will provide CLECs with network elements to transport data to and from Qwest remote terminals including unbundled Dark Fiber, DS1 capable Loop, and OC-N. Qwest will also provide CLECs with the ability to commingle their data with Qwest's pursuant to Section 9.20 (Unbundled Packet Switching).

9.4.1.2 Qwest shall not be required to provide Line Sharing as an Unbundled Network Element except as set forth below.

9.4.1.2.1 **Grandfathered Line Sharing Arrangements.** Any Line Sharing arrangement that had a Due Date on or before October 1, 2003 and was still in operation as of such date shall be "grandfathered" in accordance with the

provisions of this subsection ("Grandfathered Line Sharing Arrangement"). For any such Grandfathered Line Sharing Arrangement, the rate in effect as of October 2, 2003 shall remain in effect unless modified by order, ruling or decision of the FCC. A Grandfathered Line Sharing Arrangement shall automatically terminate on the earlier to occur of: (i) the date on which the End User Customer served by such Grandfathered Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign or (ii) the date as of which such Grandfathered Line Sharing Arrangement is terminated or discontinued by order, ruling or decision of the FCC. In addition, CLEC may disconnect, or may convert to another Qwest product as is Technically Feasible, any Grandfathered Line Sharing Arrangement at any time.

**9.4.1.2.2 Three Year Transition Period.** CLEC may order Line Sharing arrangements during the period beginning on October 2, 2003 and ending on October 1, 2004 ("New Line Sharing Arrangement") in accordance with the provisions of this subsection. The Due Date for any New Line Sharing Arrangement may be no later than October 1, 2004, and CLEC may not order any New Line Sharing Arrangement after October 1, 2004. Any New Line Sharing Arrangement shall automatically terminate if, at any time after October 1, 2004, the End User Customer served by such New Line Sharing Arrangement cancels or otherwise discontinues its subscription to the DSL service of CLEC or its successor or assign. The nonrecurring charge for the installation of Line Sharing arrangements shall apply to any New Line Sharing arrangements. The monthly recurring charge for any New Line Sharing Arrangement shall apply as set forth below.

- (a) During the period beginning on October 2, 2003 and ending on October 1, 2004, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be twenty-five (25) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.
- (b) During the period beginning on October 2, 2004 and ending on October 1, 2005, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be fifty (50) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.
- (c) During the period beginning on October 2, 2005 and ending on October 1, 2006, the monthly recurring charge for any such New Line Sharing Arrangement in all zones shall be seventy-five (75) percent of the monthly recurring charge for access to a stand-alone unbundled copper Loop for zone 1 that is in effect as of October 2, 2003, as provided in Exhibit A.
- (d) **Completion of Transition.** New Line Sharing Arrangements will no longer be available as of October 2, 2006. No later than October 2, 2006, CLEC must convert all New Line Sharing arrangements to a Line Splitting arrangement, to a stand-alone Unbundled Loop, or to such other arrangement as CLEC may have negotiated with Qwest to replace such

New Line Sharing arrangement.

e) As of February 2, 2004, Qwest's Billing systems are not equipped to Bill the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above. Qwest will not commence Billing the rates for New Line Sharing Arrangements described in paragraphs (a)-(c) above until Qwest has provided CLEC with forty-five (45) Days notice, in accordance with Section 5.21. Until such notice has been given, and the forty-five (45) Day notice period has expired, Qwest will Bill a rate for New Line Sharing Arrangements equal to the rate in effect as of October 1, 2003, unless modified by order, ruling or decision of the FCC.

**9.4.1.2.3 Discontinuation of Voice Service.** Notwithstanding anything herein to the contrary, if Qwest disconnects an End User Customer's voice service in accordance with Applicable Law, then CLEC shall be required to purchase the entire loop being disconnected to continue providing DSL service to such End User Customer.

**9.4.1.2.4 Successors and Assigns.** Line Sharing arrangements may be transferred or assigned by CLEC to another Carrier as set forth below.

**9.4.1.2.4.1 Grandfathered Line Sharing Arrangements.** Any Grandfathered Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier if the DSL service to CLEC's End User Customer is not canceled or discontinued in connection with such transfer or assignment. In such event, the monthly recurring rate in effect as of October 2, 2003 shall remain in effect with respect to such Grandfathered Line Sharing Arrangement until it is terminated or modified in accordance with the provisions of Section 9.4.1.2.1. Carrier will be billed the Transfer of Responsibility nonrecurring charge as provided in Exhibit A to transfer or assign Grandfathered Line Sharing Arrangements. Notwithstanding the foregoing, in the event the transfer or assignment of any Grandfathered Line Sharing Arrangement involves: (i) cancellation or discontinuation of the DSL service to CLEC's End User Customer or (ii) re-termination of the End User Customer's DSL service, then (a) such Line Sharing arrangement shall no longer be subject to the grandfathering provisions of Section 9.4.1.2.1 and (b) such line shall be eligible for treatment as a New Line Sharing Arrangement pursuant to, and subject to the terms and conditions of, Section 9.4.1.2.2 (including, without limitation, the specified recurring and nonrecurring charges for New Line Sharing Arrangements and the October 1, 2004 deadline for establishing New Line Sharing Arrangements).

**9.4.1.2.4.2 New Line Sharing Arrangements.** Any New Line Sharing Arrangement shall be transferable or assignable by CLEC to another Carrier provided that such transfer or assignment takes place before October 1, 2004. Carrier will be charged the Shared Loop nonrecurring charges as provided in Exhibit A to transfer or assign New Line Sharing Arrangements. Following transfer or assignment, the New Line Sharing Arrangement in question will be assessed the monthly recurring rates described in Sections 9.4.1.2.2 (a)-(c) above, and shall be

subject to termination in accordance with Sections 9.4.1.2.3 and 9.4.1.2.4. If re-termination of a New Line Sharing arrangement is required to complete any such transfer or assignment, then the new Carrier will be assessed the nonrecurring rates for New Line Sharing Arrangements as specified in Section 9.4.1.2.2 above. No transfers or assignments of New Line Sharing Arrangements shall be allowed after October 1, 2004.

## 9.4.2 Terms and Conditions

### 9.4.2.1 General

9.4.2.1.1 To order the HUNE, CLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user as provided for in this Section, and the end user must have dial tone originating from a Qwest Switch in that Wire Center. CLEC must provide the end user with, and is responsible for, the installation of a Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.4.2.1.2 Reserved for Future Use.

9.4.2.1.3 CLEC may use the HUNE to provide any xDSL services that will not interfere with analog voiceband transmissions in accordance with FCC rules. Such services currently are limited to ADSL, RADSL, Multiple Virtual Lines (MVL) and G.lite. In the future, additional services may be used by CLEC to the extent those services are deemed acceptable for Line Sharing Deployment under applicable FCC rules.

9.4.2.1.4 CLEC may not order the HUNE on a given copper Loop if Qwest, or another Telecommunications Carrier, is already using the high frequency spectrum, unless the end user has requested a change of data providers at which time Qwest shall perform the necessary work required to migrate the HUNE to the new data provider with minimal interruption to the end user's data and voice services.

9.4.2.1.5 CLEC may request and Qwest will provide, conditioning of Shared Loops to remove load coils and excess Bridged Taps, subject to the charges for Loop conditioning in Exhibit A. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the Loop. Qwest will perform requested conditioning, including de-loading and removal of excess Bridged Taps, unless Qwest demonstrates in advance that conditioning a Shared Loop will significantly degrade the End User Customer's analog voice-grade POTS service. Based on the pre-order make-up of a given copper Loop, CLEC may make a preliminary determination if the Loop can meet the technical parameters applicable to the data service it intends to provide over the Loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop to the point that it is unacceptable to the End User

Customer, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.4.2.1.6 Qwest will provide CLEC with access to the HUNE through POTS Splitters installed in Qwest Wire Centers. POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in this Section. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination.

9.4.2.1.7 Reserved for Future Use.

#### 9.4.2.2 CLEC Collocation Area Splitter

9.4.2.2.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via the standard Collocation arrangements set forth in the Collocation Section, CLEC will either purchase the POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to taxes, shipping and handling. The POTS Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. CLEC will be responsible for installing and maintaining the POTS Splitters in its Collocation areas within Qwest Wire Centers.

9.4.2.2.2 CLEC may designate some or all of its existing TIE Cables for use in connection with Line Sharing. Qwest will perform any necessary TIE Cable reclassifications, frame re-stenciling, and related work for which it is responsible and that is required to provision Line Sharing. Charges will apply pursuant to Exhibit A of the Agreement.

9.4.2.2.3 Two (2) ITPs and two (2) TIE Cables will be needed to connect POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter located in CLEC's Collocation area. The voice and data traffic will be separated at the POTS Splitter. The data traffic will be routed to CLEC's network within its Collocation area. The voice traffic will be routed to the COSMIC™/MDF Switch termination, via the ICDF, using a second TIE Cable and a second ITP.

9.4.2.2.4 Interconnection Tie Pairs and TIE Cables. There are two (2) types of ITP arrangements for connecting the Qwest network to the CLEC provided Splitter, depending on whether CLEC elects to use an ICDF or direct connections.

9.4.2.2.4.1 CLEC may elect to use an ICDF. In this instance, one ITP carries the combined voice/data signal from the COSMIC™/MDF Loop termination to the ICDF and a second ITP carries the voice only signal from the ICDF to the COSMIC™/MDF Switch termination. For each Shared Loop, two pairs of the TIE cable must be used: one pair of the TIE Cable will carry the voice/data from the ICDF to the CLEC

provided Splitter, and the second pair will carry the voice-only signal from the CLEC provided Splitter to the ICDF.

9.4.2.2.4.2 CLEC may elect to use direct connections between the CLEC-provided Splitter and the COSMIC™/MDF. In this instance, Qwest will provide one TIE Cable between each module of the COSMIC™/MDF and the CLEC-provided Splitter. One pair in the TIE Cable will carry the combined voice/data signal from the COSMIC™/MDF Loop termination to the CLEC-provided Splitter in CLEC's Collocation space. A second pair in the TIE Cable will carry the voice-only signal from the CLEC-provided Splitter to the Switch termination on the COSMIC™/MDF. These TIE Cables will be dedicated to CLEC's use, and, as a result, the full cost of the necessary Mechanized Engineering and Layout for Distributing Frame (MELD™) run, cable placement, and cable termination, and associated COSMIC™/MDF hardware to terminate a TIE Cable on each outside plant and Switch equipment module of the COSMIC™/MDF will be assessed to CLEC in accordance with Section 8 (Collocation). To minimize CLECs cost, to the extent feasible, Qwest shall consolidate CLECs requirements with the requirements of Qwest and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the Parties, including Qwest. Qwest will provide, for each Shared Loop, the TIE Cable pair assignments.

9.4.2.2.5 The Demarcation Points between Qwest's network and CLEC's network will be the place where the combined voice and data Loop is connected to the ICDF, or where CLEC chooses a direct connection to the COSMIC™/MDF, where the combined voice and data Loop originates from CLECs Collocation.

#### 9.4.2.3 Common Area Splitter Collocation

9.4.2.3.1 If CLEC elects to have POTS Splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS Splitters will be installed in those Wire Centers in one of the following locations: (a) in a relay rack near CLEC's DS0 termination points ; (b) on an ICDF to the extent such a frame is available; or (c) at CLEC's direction, on the COSMIC™/MDF, where space is available on the COSMIC™/MDF and priced on an ICB basis, or in some other appropriate location such as an existing Qwest relay rack or bay. In the event that the option selected by CLEC is not available, Qwest may place CLEC's splitter in some other appropriate location such as an existing Qwest relay rack or bay. CLEC either may purchase POTS Splitters or have Qwest purchase the POTS Splitters subject to full reimbursement of the cost of the POTS Splitters plus any pass through actual vendor invoice costs, including but not limited to, taxes, shipping and handling, and any similar charges assessed on Qwest by vendors in connection with the purchase of POTS Splitters. The POTS splitters must meet the FCC requirements and NEBs Level 1 safety standards. If CLEC purchases the POTS splitter, Qwest will be responsible for installing the POTS Splitter shelf with cards as supplied, but CLEC will lease the POTS Splitters to Qwest at no cost. Qwest will not be responsible for shortages of POTS Splitters or Qwest's inability to obtain POTS Splitters from vendors, if acting as purchasing agent on behalf of CLEC. Qwest may install the POTS



Splitter shelves of different CLECs in a single relay rack (bay) or frame.

9.4.2.3.1.1 CLEC has the option to maintain the POTS splitter cards or have Qwest perform this function. When CLEC elects to maintain the POTS splitter cards, CLEC will be responsible to troubleshoot and replace defective cards. Qwest will be responsible for troubleshooting and trouble isolation of circuit continuity issues up to the splitter card and from the splitter card to the DEMARC. CLEC will be responsible to add splitter cards as necessary to provision un-carded splitter shelf slots. CLEC will be responsible to clearly label the splitter shelf as CLEC maintained. Election to maintain the POTS splitter cards will be for all CLEC collocations in Qwest 14 state operating territory.

9.4.2.3.1.2 If CLEC elects to have Qwest perform the splitter card maintenance, CLEC will be responsible for inventory and supply of spare splitter cards in the event a defective card requires replacement or a cards needs to be added to provision an unused splitter card slot.

9.4.2.3.2 Two (2) ITPs and four (4) TIE Cables will be needed to connect the POTS Splitters to the Qwest network. One ITP will carry both voice and data traffic from the COSMIC™/MDF Loop termination, to an appropriate ICDF. From this frame, one (1) TIE Cable will carry both voice and data traffic to the POTS Splitter. The voice and data traffic will be separated at the POTS Splitter, and the separated voice and data traffic will be routed to the ICDF via separate TIE Cables (i.e., the second and third TIE Cables). At the ICDF, the data traffic will be routed to CLEC's Collocation area via a fourth TIE Cable, and the voice traffic will be routed to the COSMIC™/MDF Switch termination, via a second ITP. CLEC can also elect a direct connect option pursuant to Section 8.3.1.11.2.

9.4.2.3.3 Qwest will provide the cabling used for TIE Cables between the POTS Splitter and the ICDF. The POTS Splitter Tie Cable Connection Charge will apply.

9.4.2.3.4 The Demarcation Point between Qwest's network and CLEC's network will be at the place where the data Loop leaves the POTS Splitter on its way to CLEC's Collocated equipment, or at the ICDF, where the data Port is cabled to existing CLEC Collocation tie cable.

### 9.4.3 Line Sharing Deployment

9.4.3.1 New applications for installation of POTS Splitters will be processed in the manner outlined in the Collocation Section for Cageless or Common Collocation.

9.4.3.2 CLEC may submit applications for additional DSO TIE Cable terminations and/or reclassifications to support Line Sharing. Qwest will process any such applications for augmentation and/or reclassification of DSO TIE Cable terminations under intervals as outlined below in this Section.

9.4.3.3 Augmentation intervals will be thirty (30) Calendar Days, subject to the

following terms and conditions identified below:

9.4.3.3.1 Intentionally Left Blank.

9.4.3.3.2 Intentionally Left Blank.

9.4.3.3.3 The interval for reclassification will be fifteen (15) Calendar Days, subject to the following terms and conditions. If requested reclassification engineering results in additional requirements for DSO TIE Cable termination or TIE Cable support, the interval will default to thirty (30) Calendar Days.

9.4.3.3.4 Intentionally Left Blank.

9.4.3.3.5 In the event CLEC, or Qwest acting as purchasing agent for CLEC, is unable to procure any equipment needed to complete all work required by applications submitted to Qwest by CLEC, including but not limited to, POTS Splitters or cabling, Qwest will install the subject equipment when it becomes available. If Qwest is acting as purchasing agent for CLEC and is unable to procure equipment to complete all work in a timely manner, CLEC may provide Qwest with the subject equipment. CLEC will be notified by Qwest of the required material on-site date for the affected Wire Center(s) and CLEC will have two (2) business days to determine if it will be able to provide the subject equipment in advance of the material on-site date. If CLEC does not notify Qwest in writing of its intent to provide the subject equipment within this two (2) business days period, or if the subject equipment is not provided in a timely manner, Qwest will install the subject equipment when available.

#### 9.4.4 Rate Elements

##### 9.4.4.1 Recurring Rates for Shared Loop

9.4.4.1.1 Shared Loop Charge - A monthly recurring charge for the use of the Shared Loop will apply.

9.4.4.1.2 OSS Charge - A monthly recurring charge to recover upgrades to Qwest Operational Support Systems required to accommodate Line Sharing will apply.

##### 9.4.4.2 Nonrecurring Rates for the Shared Loop

9.4.4.2.1 Basic Installation Charge for Shared Loop – A nonrecurring charge for each Shared Loop installed will apply.

9.4.4.2.2 If CLEC requests conditioning of a Shared Loop, a nonrecurring conditioning charge specified in Exhibit A will apply for removal of load coils and excess Bridged Taps. If the conditioning significantly degrades the voice services on the Loop to the point it is unacceptable to the end user, CLEC shall pay the conditioning charge in Exhibit A to recondition the Loop.

##### 9.4.4.3 Nonrecurring Rates for Tie Cable Reclassification

9.4.4.3.1 Reclassification Charge – A nonrecurring charge will apply,

based on time and materials for reclassification of existing TIE cable capacity, by among other things, reclassification of existing TIE cables for Line Sharing, frame re-stenciling, and any other work performed between CLEC's Collocation and the intermediate distribution frame required to provision Line Sharing.

#### 9.4.4.4 Nonrecurring Rates for Maintenance and Repair

9.4.4.4.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.4.4.4.2 Additional Testing – CLEC may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A nonrecurring charge will apply in accordance with Exhibit A.

#### 9.4.4.5 Rates for Common Area Splitter Collocation

9.4.4.5.1 Splitter Shelf Charge – This charge recovers installation and ongoing maintenance associated with Splitter installation, bay installation, lighting costs, aerial support structures and grounding charge for Splitters either in a bay, on the IDF, or on the MDF/COSMIC™. These are both recurring and nonrecurring charges.

9.4.4.5.2 POTS Splitter Charge – A nonrecurring charge will apply for the cost of each POTS Splitter purchased by Qwest on behalf of CLEC. This charge will cover the cost of the POTS Splitter, plus any associated costs incurred by Qwest to order the POTS Splitter.

9.4.4.5.3 Engineering – A nonrecurring charge will apply for the planning and engineering associated with placing POTS Splitters in the Central Office, either in a bay, on the IDF, or on the MDF/COSMIC™.

9.4.4.6 POTS Splitter TIE Cable Connections Charge – A nonrecurring charge will apply for the cost of each TIE Cable connected to the POTS Splitters. This charge will cover both the TIE cables and associated blocks per one hundred (100) pair between the POTS Splitter and the intermediate distribution frame or Splitter bay.

9.4.4.7 The rates for each of the aforementioned Line Sharing rate elements are set forth in Exhibit A. Where such rates are interim, they will be subject to true up based on either mutually agreed to permanent rates or permanent rates established in a Line Sharing cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are set established by the Commission.

### 9.4.5 Ordering Process

#### 9.4.5.1 Shared Loop

9.4.5.1.1 As a part of the pre-order process, CLEC can access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. However, use of any Qwest loop qualification tool is not required prior to placing an order for a Shared Loop. CLEC will determine, in its sole discretion, whether to order the HUNE across any specific copper Loop. Qwest and CLEC will work together to modify the Loop Information Tool to better support Line Sharing. CLEC shall accept the risk that the Loop selected may not be suitable for providing the type of xDSL service CLEC seeks to provide.

9.4.5.1.2 The appropriate Splitter Meet Points dedicated to the POTS Splitters will be provided on the Line Sharing Actual Point of Termination (APOT) form one (1) Day prior to the Ready for Service Date or at an interval ordered by the Commission or further agreed to by Qwest and CLEC in writing. CLEC will provide on the LSR, the appropriate frame terminations which are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC™/MDF and ICDF.

9.4.5.1.3 Basic Installation "lift and lay" procedure will be used for all Shared Loop orders. Under this approach, a Qwest technician "lifts" the Loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's Collocated equipment in the same Wire Center.

9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) and load coils on Shared Loops as part of basic installation. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Qwest will perform an ANI test to verify that the proper pair has been connected to CLEC's DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF.

9.4.5.1.4 Qwest will provision the Shared Loop within the standard unbundled Loop Provisioning interval as defined in Exhibit C.

9.4.5.1.5 CLEC shall not place initial orders for Shared Loops until all infrastructure work necessary to provision Line Sharing in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed. Upon CLEC request at any time, including before placing an order, Qwest will arrange for a wire center walkthrough to verify the Line Sharing installation including APOT Information and associated databases, wiring and stenciling in the Qwest Wire Center.

9.4.5.1.6 Prior to placing an LSR for Shared Loop, CLEC must obtain a Proof of Authorization from the End User Customer in accordance with the Proof of Authorization Section.

#### 9.4.5.2 Common Area Splitter Collocation

9.4.5.2.1 This Section only applies to situations where CLEC orders placement of the Splitter in a common area.

9.4.5.2.2 New POTS Splitter shelves may be ordered via a single Collocation application form and quote preparation fee. Standard intervals as contained in Exhibit C will apply.

9.4.5.2.3 New POTS Splitter shelves may be ordered with an existing Collocation. CLEC must submit a new Collocation application form and the applicable fee to Qwest. Standard Cageless and/or Common Collocation intervals as contained in Exhibit C will apply.

#### 9.4.5.3 TIE Cable Reclassification

9.4.5.3.1 To the extent CLEC has existing DSO TIE Cable terminations extending from an intermediate distribution frame to its Collocation space, CLEC may request that these existing DSO TIE Cable terminations be reclassified for use with Line Sharing. CLEC shall request such reclassification through the same process used to order new terminations.

### 9.4.6 Repair and Maintenance

9.4.6.1 Qwest will allow CLEC to access Shared Loops at the point where the combined voice and data Loop is cross-connected to the POTS Splitter. If CLEC elects the Common Area Splitter Maintenance option, CLEC may access all cross connect points on the ICDF at which CLEC's data circuits terminate.

9.4.6.2 Qwest will be responsible for repairing voice services provided over Shared Loops and the physical line between Network Interface Devices at end user premises and the point of demarcation in Qwest Wire Centers. Qwest will also be responsible for inside wiring at end user premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end users. CLEC will be responsible for repairing data services provided on Shared Loops and is entitled to test the entire frequency range of the Loop facility. Qwest and CLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.4.6.3. Qwest and CLEC will continue to develop repair and maintenance procedures for Line Sharing and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: <http://www.qwest.com/wholesale/productsServices/pcat/TABL1-0.html>. In the interim, Qwest and CLEC agree that the following general principles will guide the repair and maintenance process for Line Sharing.

9.4.6.3.1 If an end user complains of a voice service problem that may be related to the use of a Shared Loop for data services, Qwest and CLEC will work together with the end user to solve the problem to the satisfaction of the end user. Qwest will not disconnect the data service provided to an end user over a Shared Loop without the written permission of CLEC unless the end user's voice

service is so degraded that the end user cannot originate or receive voice grade calls and/or the end user authorizes Qwest to disconnect the data service. Qwest will notify CLEC whenever this occurs upon voice trouble ticket closure. If the trouble is isolated into the CLEC collocation arrangement, Qwest shall notify the CLEC when disconnecting the data service and immediately restore the data service once the CLEC notifies Qwest that the trouble has been cleared.

9.4.6.3.2 Qwest and CLEC are responsible for their respective end user base. Qwest and CLEC will have the responsibility for resolution of any service trouble report(s) initiated by their respective end users.

9.4.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. Testing will be done in such a way as to ensure circuit integrity from the Central Office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess CLEC the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at its option, may require Qwest to pay a charge, equivalent to the Qwest TIC charge, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.4.6.3.4 When trouble reported by CLEC is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of CLEC on a case-by-case basis. CLEC may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide CLEC with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, CLEC will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge.

9.4.6.3.5 Where Qwest has billed CLEC for Trouble Isolation Charges for a CLEC Trouble Report, Qwest will remove such Trouble Isolation Charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Trouble Isolation Charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and

- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and
- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and
- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and
- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

9.4.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.4.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing Shared Loops. This equipment must meet the requirements for Central Office equipment set by the FCC in its March 31, 1999 Order in CC Docket No. 98-147.

9.4.6.6 Qwest and CLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

#### 9.4.7 Other

9.4.7.1 Reserved for Future Use.

### 9.5 Network Interface Device (NID)

#### 9.5.1 Description

The Qwest NID is defined as any means of Interconnection of on-premises wiring and Qwest's distribution plant, such as a cross connect device used for that purpose. Specifically, the NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit at a premises. If CLEC seeks to access a NID as well as a Subloop connected to that NID, it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5. Qwest shall permit CLEC to connect its own Loop facilities to on-premises wiring through Qwest's NID, or at any other technically feasible point. The NID carries with it all features, functions and capabilities of the facilities used to connect the

Loop distribution plant to the Customer premises wiring, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the Customer premises wiring, it may not represent the Demarcation Point where Qwest ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the Customer's on-premises wiring against lightning and other high voltage surges and is capable of terminating media such as twisted pair cable. If CLEC orders Unbundled Loops on a reuse basis, the existing drop and Qwest's NID, as well as any on premises wiring that Qwest owns or controls, will remain in place and continue to carry the signal over the Customer's on-premises wiring to the end user's equipment. Notwithstanding the foregoing, an Unbundled Loop and any Subloop terminating at a NID shall include the existing drop and the functionality of the NID as more specifically set forth in Section 9.2. The NID is offered in three (3) varieties:

9.5.1.1 Simple NID - The modular NID is divided into two (2) components, one containing the over-voltage unit (protector) and the other containing the end user's on-premises inside wiring termination, and a modular plug which connects the inside wire to the distribution plant or dial tone source. The non-modular NID is a protector block with the inside wire terminated directly on the distribution facilities.

9.5.1.2 Smart NID – To the extent Qwest has deployed "Smart" devices in general meaning a terminating device that permits the service provider to isolate the Loop facility from the premises wiring for testing purposes, and such devices have spare functioning capacity not currently used by Qwest or any other provider, Qwest shall provide unbundled access to such devices. Qwest shall also continue to allow CLEC, at its option, to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future regardless of whether or not CLEC terminates its own distribution facility on the NID.

9.5.1.3 Multi-Tenant (MTE) NID - The MTE NID is divided into two (2) functional components: one containing the over-voltage unit (protector) and the other containing the terminations of the on-premises inside wiring. Such devices contain the protectors for, and may be located externally or internally to the premises served.

## 9.5.2 Terms and Conditions

9.5.2.1 A CLEC can use the existing Qwest NID to terminate its drop if space permits, otherwise a new NID or other Technically Feasible Interconnection point is required. If CLEC installs its own NID, CLEC may connect its NID to the Qwest NID by placing a cross-connect between the two. When Provisioning a NID to NID connection, CLEC will isolate the Qwest facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Qwest will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facility based provider up to and including its NID, the Qwest facility currently in place, including the NID, will remain in place.

9.5.2.1.1 Qwest shall allow CLEC to connect its Loops directly to the NID field containing the terminations of the on-premises inside wiring not owned or controlled by Qwest, without restriction. Where Qwest does not own or control the on-premises inside wiring, CLEC and the landowner shall determine procedures for such access.



9.5.2.1.2 Qwest shall allow CLEC to use all features and functionality of the Qwest NID including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.

9.5.2.1.3 Pursuant to generally acceptable work practices, and provided the inside wire re-termination is required to meet service requirements of either Parties' End User Customer. Either Party may remove the inside wire from the NID and connect that wire to that Party's own NID.

9.5.2.1.4 CLEC may enter the subscriber access chamber or "End User Customer side" of "dual chamber" NID enclosures for the purpose of NID to NID connections.

9.5.2.1.5 Upon CLEC request, Qwest will make other rearrangements to the inside wire terminations or terminal enclosure. Charges will be assessed per section 9.5.3.4. No such charge shall be applicable if Qwest initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without a Customer's perceivable disruption in service. Qwest will not make any rearrangements of wiring that is provided by another Carrier that relocates the other Carrier's test access point without notifying the affected Carrier promptly after such rearrangement if CLEC has properly labeled its cross connect wires.

9.5.2.2 Qwest will retain sole ownership of the Qwest NID and its contents on Qwest's side. Qwest is not required to proactively conduct NID change-outs, on a wide scale basis. At a CLEC's request, Qwest will change the NID on an individual request basis by CLEC and charges will be assessed per section 9.5.3.5 except where Section 9.5.5.1 applies. Qwest is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Qwest NID, it shall employ generally accepted best engineering practices and comply with industry standards should such standards exist when it physically connects its NID (or equivalent) to the Qwest NID and makes Cross Connections necessary to provide service. At MTE NIDs, CLEC shall clearly label the cross-connect wires it uses to provide service. Qwest shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Qwest NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the Customer's in-premises wiring. All services fed through a protector field in a Qwest NID that is attached to a building will interface on industry standard lugs or a binding post type of termination and then extend, via a Cross Connection, to the Customer's on-premises wiring.

9.5.2.4.1 Reserved for Future Use.

9.5.2.4.2 Reserved for Future Use.

9.5.2.4.3 Reserved for Future Use.

9.5.2.4.4 Reserved for Future Use.

9.5.2.5 If so requested by CLEC, Qwest shall allow CLEC to connect its Loops directly to the protector field at Qwest NIDs that have unused protectors and are not used by Qwest or any other Telecommunications Carrier to provide service to the premises. If a CLEC accesses the Qwest protector field it shall do so on the distribution side of the protector field only where spare protector capacity exists. In such cases, CLEC shall only access a Qwest NID protector field in cable increments appropriate to the NID. If twenty-five (25) or more metallic cable pairs are simultaneously terminated at the MTE NID, additions must be in increments of twenty-five (25) additional metallic pairs. In all cases, Telecommunications cables entering a Qwest NID must be terminated in compliance with FCC 88-57, section 315 of the National Electric Safety Code and section 800.30 of the National Electric Code. When CLEC removes Qwest facilities from the NID protector, it must terminate the spare Qwest Loops on protection devices that ensure that Qwest's facilities and the Customer's premises be protected from electrical surges. In such instances, CLEC must provide Qwest with written notice within 10 days that it had so disconnected the Qwest facilities from the protection device. CLECs will be liable for damages in situations where their technicians have failed to follow standard electrical protection and safety procedures. To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement.

9.5.2.6 Reserved for Future Use.

### 9.5.3 Rate Elements

9.5.3.1 If CLEC requests the current Simple NID to be replaced with a different Simple NID, pursuant to section 9.5.2.1, charges will be assessed on a time and materials basis with CLEC paying only for the portion of the change out that is specific to and for the functionality that supports CLEC requirements.

9.5.3.2 Recurring rates for unbundled access to the protector field in a Qwest NID are contained in Exhibit A of this Agreement and apply pursuant to 9.5.2.5. As of the Effective Date of this Agreement, Qwest has not implemented charges for this recurring rate element, but reserves the right to assess such a charge in the future.

9.5.3.3 When a CLEC requests that Qwest perform the work to connect its NID to the Qwest NID, the costs associated with Qwest performing such work will be charged to CLEC on a time and materials basis.

9.5.3.4 Where Qwest makes 9.5.2.1.5 rearrangements to the inside wire terminations or terminal enclosure on CLEC request pursuant to Section 9.5.2.1.5, charges will be assessed on a time and materials basis.

9.5.3.5 CLEC will be billed on a time and materials basis for any change out Qwest performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change out that is specific to the CLEC request for additional capacity.

### 9.5.4 Ordering Process

9.5.4.1 Reserved for Future Use.

9.5.4.2 CLEC may access a MTE NID after determining that the terminal in question is a NID, per the process identified in 9.3. If the terminal is a NID and CLEC wishes to access the Customer field of the NID, no additional verification is needed by Qwest. CLEC shall tag their jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross-connect field other than to the Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Qwest shall notify CLEC, within 10 business days, if the connection is not Technically Feasible. In such cases, Qwest shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Qwest would support. CLEC shall have the option of employing the alternative terminal or disputing the claim of technical infeasibility pursuant to the dispute resolution provisions of this Agreement. No additional verification is needed by Qwest and CLEC shall tag their jumper wire.

9.5.4.3 Subject to the terms of 9.5.4.2, CLEC may perform a NID-to-NID connection, according to 9.5.2.3, and access the Customer field of the NID without notice to Qwest. CLEC may access the protector field of the NID by submitting a LSR.

#### **9.5.5 Maintenance and Repair**

9.5.5.1 If Qwest is dispatched to an end user's location on a maintenance issue and finds the NID to be defective, Qwest will replace the defective element or, if beyond repair, the entire device at no cost to CLEC. If the facilities and lines have been removed from the protector field or damaged by CLEC, CLEC will be responsible for all costs associated with returning the facilities and lines back to their original state. Charges for this work will be on a time and materials basis and billed directly to CLEC. Billing disputes will be resolved in accordance with the dispute resolution process contained in this Agreement. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

#### **9.6 Unbundled Dedicated Interoffice Transport (UDIT)**

Qwest shall provide access to Unbundled Dedicated Interoffice Transport (UDIT) in a non-discriminatory manner according to the following terms and conditions. The following services are not available under the terms of this Agreement:

- a) Extended Unbundled Interoffice Transport (EUDIT);
- b) OCn UDIT;
- c) More than twelve (12) DS3 UDIT, for one carrier or its affiliates, per route;
- d) UDIT as a part of a Meet-Point;
- e) Remote Node/Remote Port/
- f) SONET add/drop multiplexing; or

| OPEN – Covad proposed; Qwest cannot agree

| DRAFT – 3-24-05

g) UDIT on routes where the Commission has found no CLEC impairment under Section 251 of the Act; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

### 9.6.1 Description

9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a Network Element of a single transmission path between Qwest End Office Switches, Serving Wire Centers or Tandem Switches in the same LATA and state. A UDIT can also provide a path between one (1) CLEC's Collocation in one (1) Qwest Wire Center and a different CLEC's Collocation in another Qwest Wire Center. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. UDIT is available in DS0 through DS3 bandwidths. CLEC can assign channels and transport its choice of voice or data. Specifications, interfaces and parameters are described in Qwest Technical Publication 77389.

9.6.1.2 An unbundled multiplexer is offered as an optional stand-alone element associated with UDIT. A 3/1 multiplexer provides CLEC with the ability to multiplex the DS3 44.736 Mbps signal to twenty-eight (28) DS1 1.544 Mbps channels. The 3/1 multiplexer, in conjunction with an ITP, provides a DS3 signal terminated at a Demarcation Point and twenty-eight (28) DS1 signals terminated at a Demarcation Point. A 1/0 multiplexer provides CLEC with the ability to multiplex the DS1 1.544 Mbps signal to twenty-four (24) DS0 64 Kbps channels. The 1/0 multiplexer provides a DS1 signal terminated at a Demarcation Point and twenty-four (24) DS0 signals terminated at a Demarcation Point.

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9.6.1.4 Where unbundled DS3 is available as a UNE, Qwest is not required to provide, and CLEC shall not submit orders for, more than twelve (12) DS3 UDIT channels on a specific Wire Center to Wire Center route for which unbundled DS3 UDIT is available as an Unbundled Network Element.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

OPEN – Covad proposed; Qwest cannot agree

9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has found no impairment under Section 251 and also has not

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required access under Section 271 or applicable state law. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

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OPEN – Covad proposed; Qwest cannot agree

9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.

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OPEN – Covad proposed; Qwest cannot agree

9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has found no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.

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9.6.1.7 CLEC will not order services provided in this Section with High Capacity Loops. If CLEC wishes to order services provided in this Section with High Capacity Loops in the future, the parties will negotiate an amendment to this agreement incorporating the terms and conditions for ordering such services, including applicable Service Eligibility Criteria established by Applicable Law

9.6.1.8 All services provided in this Section are subject to the Ratcheting criteria as outlined in Section 9.1.1.4 of this Agreement.

## 9.6.2 Terms and Conditions

9.6.2.1 To the extent that CLEC is ordering access to a UNE Combination, and Cross Connections are necessary to combine UNEs, Qwest will perform requested and necessary Cross Connections between UNEs in the same manner that it would perform such Cross Connections for its End User Customers or for itself. When UDIT is combined or Commingled with high capacity loops, the circuit is subject to the Service Eligibility Criteria as stated in Section 9.1.1.5. If not ordered as a combination, CLEC is responsible for performing Cross Connections at its Collocation or other mutually determined Demarcation Point between UNEs and ancillary or Finished Services, and for transmission design work including regeneration requirements for such connections. Such Cross Connections will not be required of CLEC when CLEC orders a continuous

dedicated transport element from one point to another. UDIT may be directly connected to Finished Services, except as prohibited by Existing Rules.

9.6.2.2 CLEC must order all multiplexing elements (if it chooses the multiplexing option) and regeneration requirements with its initial installation for the 3/1 multiplexer, including all 28 DS1s and the settings on the multiplexer cards. If options are not selected and identified on the order by CLEC, the order will be held until options are selected. For the 1/0 multiplexer, the low side channels may be ordered as needed. Low Side Channelization charges are assigned as channels are ordered. When Loops are ordered in combination with multiplexing, Qwest will provision Loops directly terminated to the multiplexer.

9.6.2.3 With the exception of combinations provided through the UNE Combinations Section 9.23, CLEC may utilize any form of Collocation at both ends of the UDIT. Qwest's design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network. Cable distance limitations are based on ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".

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9.6.2.6 Intentionally Left Blank.

9.6.2.7 Intentionally Left Blank.

### 9.6.3 Rate Elements

9.6.3.1 DS1 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

- a) DS1 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 1.544 Mbps termination at a DSX or DCS. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.
- b) DS1 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 1.544 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS1 UDIT. The mileage is calculated between the originating and terminating Wire Centers.
- c) Intentionally Left Blank.
- d) Intentionally Left Blank.

9.6.3.2 DS3 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

- a) DS3 Transport Termination (Fixed) Rate Element. This recurring rate

element provides a 44.736 Mbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS3 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides an interoffice transmission path of 44.736 Mbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS3 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) Intentionally Left Blank.

d) DS3 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS3 service.

e) Intentionally Left Blank.

9.6.3.3 DS0 UDIT rates are contained in Exhibit A of this Agreement and include the following elements:

a) DS0 Transport Termination (Fixed) Rate Element. This recurring rate element provides a 64 Kbps termination. In addition to the fixed rate element, a per-mile rate element, as described below, also applies.

b) DS0 Transport Facilities (Per Mile) Rate Element. This recurring rate element provides a transmission path of 64 Kbps between Qwest Wire Centers. This is a mileage sensitive element based on the V&H coordinates of the DS0 UDIT. The mileage is calculated between the originating and terminating Wire Centers.

c) DS0 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS0 service.

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9.6.3.6 Low Side Channelization (LSC) Charge. A recurring charge for low side multiplexed channel cards and settings at each end of the DS0 UDIT.

9.6.3.7 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:

a) Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.

b) Nonrecurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.

9.6.3.8 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:

- a) **Recurring Multiplexing Charge.** The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.
- b) **Nonrecurring Multiplexing Charge.** One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.
- c) **Low Side Channelization (LSC).** A recurring charge for low side multiplexed channel cards and settings plus a nonrecurring charge for each individual channelization Provisioning.

9.6.3.9 Rearrangement rates are contained in Exhibit A of this agreement.

9.6.3.10 Remote Node/Remote Port rates are contained in Exhibit A of this Agreement and include the following charges:

- a) **Recurring Remote Node Charge.** The Remote Node at OC3, OC12 or OC48.
- b) **Recurring Remote Port Charge.** A recurring charge for Remote Port card at DS1, DS3, OC3, OC12.
- c) **Nonrecurring Remote Port.** One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

#### **9.6.4 Ordering Process**

9.6.4.1 Ordering processes and installation intervals are as follows:

9.6.4.1.1 UDIT is ordered via the Access Service Request (ASR) process. Ordering processes are contained in the Access to OSS Section of this Agreement.

9.6.4.1.2 Reserved for Future Use.

9.6.4.1.3 The interval will start when Qwest receives a complete and accurate Access Service Request (ASR). This date is considered the start of the installation interval if the order is received prior to 3:00 p.m. The installation interval will begin on the next business day for service requests received after 3:00 p.m. The installation intervals have been established and are set forth in Exhibit C, Section 2.0 of this Agreement.

9.6.4.1.4 Subsequent changes to the quantity of services on an existing order will require a revised order. Also, additional charges apply for the following modifications to existing orders unless the need for such change is caused by Qwest:

- a) Service Date changes;
- b) Partial cancellation;
- c) Design change; and



- d) Expedited order.

9.6.4.1.5 An order may be canceled any time up to and including the Service Date. Cancellation charges will apply except when:

- a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Qwest that such Due Date will be, delayed ten (10) business days or longer; or
- b) The original Due Date has been scheduled later than the expiration of the standard interval set forth in Exhibit C and CLEC cancels its order no later than ten (10) Days before such original Due Date.

9.6.4.1.6 Definitions of the most common critical dates that occur during the ordering and installation process are included in the Definitions Section of this Agreement.

9.6.4.2. UDIT is ordered with basic installation. Qwest will install the UDIT extending connections to CLEC Demarcation Point and will notify CLEC when the work activity is complete. UDIT will comply with technical specifications contained in Technical Publication 77389. Joint testing is available pursuant to the joint testing provisions contained in Section 8 of this Agreement.

9.6.4.3 UDIT 3/1 multiplexing is provisioned as a complete system with terminations at the Demarcation Point and all multiplexing cards. CLEC must order settings for all cards at the time of the multiplexing request.

9.6.4.4 For UDIT 1/0 multiplexing, the high side is fully provisioned with the order. The low side is provisioned when low side channels are ordered. Optional card settings are selected by CLEC at the time of the DS0 order.

9.6.4.5 Qwest will perform industry standard tests, set forth in Technical Publication 77389, when installing UDIT service.

9.6.4.6 Reserved for Future Use.

## **9.6.5 Maintenance and Repair**

9.6.5.1 The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC Cross Connections will be repaired by CLEC and Qwest Cross Connections will be repaired by Qwest. Maintenance and Repair processes are contained in the Support Functions Section of this Agreement.

## **9.6.6 Rearrangement**

9.6.6.1 CLEC can submit requests through the ASR process to move or rearrange UDIT terminations on CLEC's Demarcation Point or to change UDIT options. These rearrangements are available through a single Wire Center or dual Wire Center request. Single Wire Center rearrangements are limited to the change in options or movement of terminations within a single Wire Center. Dual Wire Center rearrangements are used to change options or movement of terminations in two (2) Wire

Centers. Rearrangement is only available for in-place and working UDITs.

9.6.6.2 The rearrangement of terminations or option changes are completed as an "uncoordinated change" (basic request) and will be completed within the normal intervals outlined in Exhibit C. If CLEC desires a coordinated rearrangement of terminations or options changes, additional labor installation as identified in Exhibit A shall apply.

9.6.6.3 CLEC will submit an ASR with the rearrange USOC and appropriate termination information (e.g., CFA) or NC/NCI codes (Network Channel Codes/Network Channel Interface Codes).

## **9.7 Unbundled Dark Fiber**

CLEC does not intend to order Unbundled Dark Fiber; however in the event CLEC wishes to order Unbundled Dark Fiber, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.8 Shared Interoffice Transport**

CLEC does not intend to order Shared Interoffice Transport; however in the event CLEC wishes to order Shared Interoffice Transport, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)**

CLEC does not intend to order UCCRE; however in the event CLEC wishes to order UCCRE, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.10 Local Tandem Switching**

CLEC does not intend to order Local Tandem Switching; however in the event CLEC wishes to order Local Tandem Switching, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.11 Local Switching**

CLEC does not intend to order Local Switching; however in the event CLEC wishes to order Local Switching, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.12 Customized Routing**

CLEC does not intend to order Customized Routing; however in the event CLEC wishes to order Customized Routing, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.13 Access to Signaling**

CLEC does not intend to order Access to Signaling; however in the event CLEC wishes to order Access to Signaling, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.14 AIN Services**

CLEC does not intend to order AIN Services; however in the event CLEC wishes to order AIN Services, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.15 Interconnection to Line Information Database (LIDB)**

CLEC does not intend to order LIDB; however in the event CLEC wishes to order LIDB, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.16 8XX Database Query Service**

CLEC does not intend to order 8XX Database Query Service; however in the event CLEC wishes to order 8XX Database Query Service, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.17 InterNetwork Calling Name (ICNAM)**

CLEC does not intend to order ICNAM; however in the event CLEC wishes to order ICNAM, the Parties will negotiate an appropriate amendment to this Agreement.

### **9.18 Additional Unbundled Elements**

CLEC may request non-discriminatory access to and, where appropriate, development of, additional UNEs not covered in this Agreement pursuant to the Bona Fide Request Process.

### **9.19 Construction Charges**

Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a Network Element

that satisfies the description of a UNE contained in this Agreement, that Network Element shall be deemed a UNE.

## 9.20 Unbundled Packet Switching

Packet Switching is no longer an Unbundled Network Element under existing rules.

## 9.21 UNE-P Line Splitting

CLEC intends to operate only as a DLEC and does not intend to operate as the voice provider CLEC as described in this Section 9.21. In the event that CLEC wishes to order voice services under this Section 9.21, the Parties will negotiate an amendment to this Agreement adding the appropriate sections of the SGAT.

### 9.21.1 Description

Line Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with a new or existing UNE-P by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. A POTS Splitter must be inserted into the UNE-P to accommodate establishment of the advanced data service. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

### 9.21.2 Terms and Conditions

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If the Commission determines that Qwest is no longer required to provide UNE-P Combination services in a market area pursuant to Section 251 of the Act, CLEC shall not submit new orders for Line Splitting as of the date the Commission rules CLECs are no longer entitled to submit orders for unbundled switching. If, notwithstanding the Section 251 determination, Qwest is required to provide access to unbundled switching under Section 271 or applicable state law, then line splitting remains available in that market area. To the extent Qwest is no longer required to provide access to unbundled switching under any applicable law, and to the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.

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9.21.2.1 General

9.21.2.1.1 The Customer of record will order the insertion of a POTS Splitter. Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.21.2.1.2 To order Line Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.21.2.1.3 CLEC/DLEC may provide any xDSL services that are compatible with CLEC UNE-P POTS service in accordance with ANSI T1.413 or IEEE 820 or other industry standards.

9.21.2.1.4 There may be only one DLEC at any given time that provides advanced data service on any given UNE-P.

9.21.2.1.5 The Customer of record will be able to request conditioning of the Unbundled Loop portion of the UNE-P. If necessary to meet any applicable standards contained in Qwest's Technical Publication 77384 or if requested by CLEC to condition (remove load coils and excess Bridged Tap) shared Loops, Qwest will perform such conditioning subject to conditioning charges contained in Exhibit A, if applicable. In order to meet the applicable standards or if requested by CLEC to do conditioning, Qwest may also remove UDCs or perform a Line Move when necessary to provision the loop. If CLEC requests conditioning and such conditioning significantly degrades the voice services on the Loop of the UNE-P to the point that it is unacceptable to CLEC, CLEC shall pay the conditioning rate set forth in Exhibit A to recondition the Loop.

9.21.2.1.6 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Shared Loop Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that Qwest is not required to inventory more than two (2) points of termination. For UNE-P Line Splitting, Qwest shall use the same number of Cross Connections and the same length of the tie pairs as it uses for Line Sharing.

9.21.2.1.7 Reserved for Future Use.

9.21.2.1.8 POTS Splitter Collocation requirements are covered in the Shared Loop Section of this Agreement.

**9.21.3 Rate Elements**

The following UNE-P Line Splitting rate elements are contained in Exhibit A of this Agreement.

9.21.3.1 Recurring Rates for UNE-P Line Splitting.

9.21.3.1.1 Interconnection TIE Pairs (ITP). A monthly recurring charge to recover the costs associated with the use of 2 ITPs, one for voice and one for voice/data.

9.21.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the UNE-P Loop.

9.21.3.2 Nonrecurring Rates for the UNE-P Line Splitting

9.21.3.2.1 Basic Installation Charge for UNE-P Line Splitting – A nonrecurring charge for each UNE-P Line Splitting installed will apply.

9.21.3.2.2 Charge for conditioning Loop associated with UNE-P – A nonrecurring charge for either conditioning the Loop by removing load coils and/or excess Bridged Taps; or reconditioning the line if necessary to assure the quality of the voice service on the UNE-P.

9.21.3.3 Nonrecurring Rates for Maintenance and Repair

9.21.3.3.1 Trouble Isolation Charge – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. This charge may be assessed by either Qwest or the CLEC in accordance with 9.4.6.3.5.

9.21.3.3.2 Additional Testing – The Customer of record may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A nonrecurring charge will apply in accordance with Exhibit A.

9.21.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.21.3.5 Where there are no Commission-approved interim or permanent rates for UNE-P Line Splitting, the current rates for Line Sharing will be used for Line Splitting. All such Line Splitting rates shall be deemed as interim, and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission for UNE-P Line Splitting. In the event interim rates for UNE-P Line Splitting are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true-up will be performed until mutually agreed upon permanent rates are established or permanent rates are established by the Commission for UNE-P Line Splitting.

**9.21.4 Ordering Process**

9.21.4.1 UNE-P Line Splitting

9.21.4.1.1 As a part of the pre-order process, CLEC/DLEC may access

Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific UNE-P associated Loop. Neither the CLEC/DLEC nor the Customer of Record are required to access loop characteristic information prior to placing an order.

9.21.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.21.4.1.3 Basic Installation "lift and lay" procedure will be used for all Line Splitting orders. Under this approach, a Qwest technician "lifts" the Loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's/DLEC's collocated equipment in the same Wire Center. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC DSLAM. When installation of Line Splitting is in conjunction with the migration of service from another provider, every effort will be taken by Qwest to ensure that the End User's services, both voice and data, experience limited interruption.

9.21.4.1.4 The Customer of record shall not place orders for UNE-P Line Splitting until all work necessary to provision UNE-P Line Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.21.4.1.5 If a Line Splitting LSR is placed to change from Line Sharing to UNE-P Line Splitting or to change the voice provider in a UNE-P Line Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

9.21.4.1.6 The Customer of record shall submit the appropriate LSR's associated with establishing UNE-P and Line Splitting. A single LSR may be used to establish both the UNE-P and Line Splitting service at the same time.

## 9.21.5 Billing

9.21.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format, Billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for CLEC/DLEC review.

9.21.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Line Splitting rate elements.

## 9.21.6 Repair and Maintenance

9.21.6.1 Qwest will allow CLEC/DLEC to access UNE-P Line Splitting at the point

where the combined voice and data Loop is cross-connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points document.

9.21.6.2 The Customer of record will be responsible for reporting to Qwest voice service troubles provided over UNE-P Line Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. CLEC/DLEC will be responsible for repairing data services provided on UNE-P Line Splitting. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.21.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for UNE-P Line Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website: <http://www.qwest.com/wholesale/productsservices/pcat/index.html>. In the interim, Qwest and CLEC/DLEC agree that the following general principles will guide the repair and maintenance process for UNE-P Line Splitting.

9.21.6.3.1 If an end user complains of a voice service problem that may be related to the use of an UNE-P for data services, Qwest and CLEC/DLEC will work together with the end user to solve the problem to the satisfaction of the end user. Disconnection of the data service will only be done after Qwest has clearly determined that no trouble exists in the Qwest network or parts of the network maintained by Qwest (i.e.; Common Area Splitter Collocation where the problem is in the splitter). Should Qwest temporarily disconnect the data service in order to restore voice service caused by a problem in the data providers network, Qwest shall promptly restore the data service and complete the normal test process, including synchronization testing, to ensure both data and voice are working properly. This will be done within twenty-four (24) hours of notification by the customer of record that the problem in the data providers network has been corrected.

9.21.6.3.2 CLEC and DLEC are responsible for their respective end user base. CLEC/DLEC will have the responsibility for initiation and resolution of any service trouble report(s) initiated by their respective end users.

9.21.6.3.3 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on UNE-P Line Splitting in response to trouble tickets initiated by CLEC. At CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the TIC Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at it's option, may require Qwest to credit the TIC or CLEC's actual cost,



whichever is less, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.21.6.3.4 When trouble reported by the Customer of record is not isolated or identified by tests for electrical faults (e.g., opens, shorts, and/or foreign voltage), Qwest may perform additional testing at the request of the Customer of record on a case-by-case basis. The Customer of record may request that Qwest perform additional testing and Qwest may decide not to perform requested testing where it believes, in good faith, that additional testing is unnecessary because the test requested has already been performed or otherwise duplicates the results of a previously performed test. In this case, Qwest will provide the Customer of record with the relevant test results on a case-by-case basis. If this additional testing uncovers electrical fault trouble (e.g., opens, shorts, and/or foreign voltage) in the portion of the network for which Qwest is responsible, the Customer of record will not be charged by Qwest for the testing. If this additional testing uncovers a problem in the portion of the network for which CLEC/DLEC is responsible, Qwest will assess the appropriate Miscellaneous Charge to the Customer of record.

9.21.6.4 When POTS Splitters are installed in Qwest Wire Centers via Common Area Splitter Collocation, CLEC/DLEC will order and install additional Splitter cards as necessary to increase the capacity of the POTS Splitters. CLEC/DLEC will leave one unused, spare Splitter card in every shelf to be used for repair and maintenance until such time as the card must be used to fill the shelf to capacity.

9.21.6.5 When POTS Splitters are installed in Qwest Wire Centers via standard Collocation arrangements, CLEC/DLEC may install test access equipment in its Collocation areas in those Wire Centers for the purpose of testing UNE-P Line Splitting. This equipment must meet the requirements for Central Office equipment set by the FCC.

9.21.6.6 Qwest, CLEC and DLEC will work together to address end user initiated repair requests and to prevent adverse impacts to the end user.

#### **9.21.7 Customer of Record and Authorized Agents**

9.21.7.1 "Customer of record" is defined for purposes of this section as the CLEC that is the billed Customer for Line Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.21.7.2 and 9.21.7.3 to perform ordering and/or Maintenance and Repair functions.

9.21.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.21.7.3 The Customer of record shall hold Qwest harmless with regard to any harm to Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained

from the Customer of record the necessary access and security devices through the Customer of record, including but not limited to user identifications, digital certificates and SecurID cards, that allow such person to access the records of the Customer of record unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

## **9.22 Reserved for Future Use**

## **9.23 Unbundled Network Elements Combinations (UNE Combinations)**

CLEC does not intend to order UNE Combinations; however in the event CLEC wishes to order UNE Combinations, the Parties will negotiate an appropriate amendment to this Agreement.

## **9.24 Loop Splitting**

### **9.24.1 Description**

Loop Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with voice over a new or existing Unbundled Loop by using the frequency range above the voice band on the copper portion of a Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. The POTS Splitter separates the voice and data traffic and allows the copper portion of the Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the end user. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.24.1.1 With regard to the current requirement that Loop Splitting be offered over an existing Unbundled Loop, Qwest acknowledges that there are ongoing industry discussions regarding the Provisioning of Loop Splitting over a new Unbundled Loop. If as a result of those discussions, a process is developed for Loop Splitting over a new Loop, Qwest will amend its Agreement to eliminate the limitation of Loop Splitting to existing Unbundled Loops. Requests for other Loop Splitting applications, including line splitting on resold lines, must be submitted through the Special Request Process (SRP).

### **9.24.2 Terms and Conditions**

#### **9.24.2.1 General**

9.24.2.1.1 Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the end user to receive separate voice and data service across a single copper Loop.

9.24.2.1.2 To order Loop Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the end user. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the

FCC or be compliant with ANSI T1.413.

9.24.2.1.3 There may only be one DLEC at any given time that provides advanced data service on any given Unbundled Loop.

9.24.2.1.4 If Loop Splitting is requested for an analog Loop, the Loop must be converted to a 2/4 wire non-loaded Loop or ADSL compatible Loop.

9.24.2.1.4.1 The Customer of record will be able to request conditioning of the Unbundled Loop pursuant to the charges contained in Exhibit A. Qwest will perform requested conditioning of Unbundled Loops to remove load coils and excess Bridged Taps, undertake a line move, and/or remove UDCs under the terms and conditions associated with Loop conditioning contained in Section 9.2 of this Agreement.

9.24.2.1.4.2 If requested conditioning significantly degrades the existing service over the Unbundled Loop to the point that it is unacceptable to CLEC, Customer of record shall pay to convert back to an analog Loop.

9.24.2.1.5 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Line Sharing Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that points of termination are kept to a minimum. For Loop Splitting, Qwest shall use the same length of tie pairs as it uses for Line Sharing, except for the additional CLEC to CLEC connection, which is not required for Line Sharing.

9.24.2.1.6 POTS Splitter Collocation requirements are covered in the Line Sharing Section of this Agreement.

### 9.24.3 Rate Elements

The following Loop Splitting rate elements are contained in Exhibit A of this Agreement.

9.24.3.1 Recurring Rates for Loop Splitting.

9.24.3.1.1 Interconnection TIE Pairs (ITP)- A monthly recurring charge to recover the costs associated with the use of ITPs.

9.24.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the Unbundled Loop.

9.24.3.2 Nonrecurring Rates for the Loop Splitting

9.24.3.2.1 Basic Installation Charge for Loop Splitting – A nonrecurring charge for Loop Splitting installed will apply.

9.24.3.3 Nonrecurring Rates for Maintenance and Repair

9.24.3.3.1      **Trouble Isolation Charge** – A nonrecurring charge for Trouble isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section. Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Loop Splitting in response to trouble tickets initiated by CLEC. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g., opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess Customer of record the Trouble Isolation Charge. Should such trouble eventually be proven to be an electrical fault in Qwest's network, Qwest shall credit the TIC charge back to the CLEC and the CLEC, at its option, may require Qwest to credit the TIC charge or CLEC's actual cost, whichever is less, to recover its cost for additional trouble isolation, pursuant to Section 9.4.6.3.5.

9.24.3.3.2      **Additional Testing** – The Customer of record may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A nonrecurring charge will apply in accordance with Exhibit A.

9.24.3.4      **Rates for POTS Splitter Collocation** are included in Exhibit A of this Agreement.

9.24.3.5      All of these rates are interim and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are established by the Commission.

## **9.24.4 Ordering Process**

### **9.24.4.1      Loop Splitting**

9.24.4.1.1      As a part of the pre-order process, CLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in the Support Functions Section. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific Unbundled Loop. However, neither CLEC/DLEC nor the Customer of record are required to access Loop characteristic information prior to placing an order.

9.24.4.1.2      The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.24.4.1.3      Basic Installation "lift and lay" procedure will be used for all Loop Splitting orders. Under this approach, a Qwest technician "lifts" the Loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's/DLEC's collocated equipment in the same Wire Center.

9.24.4.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage), excessive bridged tap, and load coils as part of basic installation. Effective upon approval in CMP, at CLEC's request, Qwest will perform a synchronization test using the protocol verified by CLEC. Qwest will use an Acterna 350 Plus test set, or similar test set, to perform the synchronization test. The synchronization test confirms continuity from the MDF to the CLEC's DSLAM.

9.24.4.1.3.2 Loop Splitting shall be provided in accordance with the technical specifications contained in Technical Publication 77384.

9.24.4.1.4 The Customer of record shall not place orders for Loop Splitting until all work necessary to provision Loop Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.24.4.1.5 The Customer of record shall submit the appropriate LSR's associated with establishing Unbundled Loop and Loop Splitting.

9.24.4.1.6 If a Loop Splitting LSR is placed to change from Line Sharing to Loop Splitting or to change the voice provider in an existing Loop Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

#### **9.24.5 Billing**

9.24.5.1 Qwest shall provide a bill to the Customer of record, on a monthly basis, within seven to ten (7-10) calendar Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format.

9.24.5.2 Qwest shall bill the Customer of record for all recurring and nonrecurring Loop Splitting rate elements.

#### **9.24.6 Repair and Maintenance**

9.24.6.1 Qwest will allow CLEC/DLEC to access Loop Splitting at the point where the combined voice and data Loop is cross connected to the POTS Splitter and at all cross-connect points on the ICDF, in accordance with the Collocation Test Access Points documents.

9.24.6.2 The Customer of record or its authorized agent will be responsible for reporting to Qwest service troubles provided over Loop Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the user premises and the point of demarcation in Qwest Wire Centers. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance. In the case of Common Area Splitter Collocation, if CLEC/DLEC has not elected otherwise, Qwest shall have maintenance responsibility.

9.24.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for Loop Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's website.

#### **9.24.7 Customer of Record and Authorized Agents**

9.24.7.1 "Customer of Record" is defined for the purposes of this section as the CLEC that is the billed Customer for Loop Splitting. The Customer of record may designate an authorized agent pursuant to the terms of sections 9.24.7.2 and 9.24.7.3 to perform ordering and/or Maintenance and Repair functions.

9.24.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.24.7.3 The Customer of record shall hold Qwest harmless with regard to any harm Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other person who has obtained from the Customer of record the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that allow person to access the records of the Customer of record unless such access and security devices through the Customer of record were wrongfully obtained by such person through the willful or negligent behavior of Qwest.

## **Section 10.0 - ANCILLARY SERVICES**

### **10.1 Reserved for Future Use**

### **10.2 Local Number Portability**

CLEC does not intend to order Local Number Portability (LNP); however in the event CLEC wishes to order Local Number Portability (LNP), the Parties will negotiate an appropriate amendment to this Agreement.

### **10.3 911/E911 Service**

CLEC does not intend to order 911/E911 Service; however in the event CLEC wishes to order 911/E911 Service, the Parties will negotiate an appropriate amendment to this Agreement.

### **10.4 White Pages Directory Listings**

CLEC does not intend to order White Pages Directory Listings; however in the event CLEC wishes to order White Pages Directory Listings, the Parties will negotiate an appropriate amendment to this Agreement.

### **10.5 Directory Assistance**

CLEC does not intend to order Directory Assistance; however in the event CLEC wishes to order Directory Assistance, the Parties will negotiate an appropriate amendment to this Agreement.

### **10.6 Directory Assistance List**

CLEC does not intend to order Directory Assistance List; however in the event CLEC wishes to order Directory Assistance List, the Parties will negotiate an appropriate amendment to this Agreement.

### **10.7 Toll and Assistance Operator Services**

CLEC does not intend to order Toll and Assistance Operator Services; however in the event CLEC wishes to order Toll and Assistance Operator Services, the Parties will negotiate an appropriate amendment to this Agreement.

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

CLEC does not intend to order Access to Poles, Ducts, Conduits, and Rights of Way; however in the event CLEC wishes to order Access to Poles, Ducts, Conduits, and Rights of Way, the Parties will negotiate an appropriate amendment to this Agreement.





## Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or End User Customers, or their property as it employs to protect its own personnel, End User Customers and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of Telecommunications transmissions between End User Customers during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any End User Customer at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The Parties' Telecommunications networks are part of the national security network, and as such, are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. The Parties are responsible for covering their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure its own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the Telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-879-7328. In cases of emergency, CLEC shall call 911 and 1-888-879-7328.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Qwest and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 Qwest and CLEC's employees, agents and vendors shall comply with Qwest Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, or other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction may result in denial of access for that individual and may constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar Days of a CLEC violation of this provision to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of this provision and the personnel involved,

2) identification of the safety regulation violated, and 3) date and location of such violation. CLEC will have five (5) calendar Days to remedy any such violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such violation of which it has received notice within such five (5) calendar Days following receipt of such notice, CLEC shall be denied unescorted access to the affected Premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest Premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this Agreement, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11 shall prevent CLEC, its employees or agents from performing modifications, alterations, additions or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises, Qwest equipment or Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, to Qwest Service Assurance (800-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. The compliant Party shall provide immediate notice of the non-compliant work activity to the non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation. If such non-compliant work activities pose an immediate threat to the safety of the other Party's employees, interference with the performance of the other Party's service obligations, or pose an immediate threat to the physical integrity of the other Party's facilities, the compliant Party may perform such work and/or take action as is necessary to correct the condition at the non-compliant Party's expense. In the event the non-compliant Party disputes any action the compliant Party seeks to take or has taken pursuant to this provision, the non-compliant Party may pursue immediate resolution by expedited Dispute Resolution. If the non-compliant Party fails to correct any safety non-compliance within ten (10) calendar Days of written notice of non-compliance, or if such non-compliance cannot be corrected within ten (10) calendar Days of written notice of non-compliance, and if the non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, the compliant Party may pursue immediate resolution by expedited Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

11.25 CLEC's employees, agents or vendors outside the designated CLEC access area, or without proper identification may be asked to vacate the Premises and Qwest security

may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar Days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)

800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available seven (7) Days a week, twenty-four (24) hours a Day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) prior to gaining access into a Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel. On a monthly basis, Qwest will provide said list to CLEC.

11.34 Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, NPA-

976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.34.1 Uncollectable or unbillable revenues resulting from, but not confined to, Provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing such error or malicious acts, if such malicious acts could have reasonably been avoided.

11.34.2 Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending Operational Support Systems by unauthorized third parties that could have reasonably been avoided shall be the responsibility of the Party having administrative control of access to said Network Element or operational support system software.

11.34.3 Qwest shall be responsible for any direct uncollectible or unbillable revenues resulting from the unauthorized physical attachment to Loop facilities from the Main Distribution Frame up to and including the Network Interface Device, including clip-on fraud, if Qwest could have reasonably prevented such fraud.

11.34.4 To the extent that incremental costs are directly attributable to a revenue protection capability requested by CLEC, those costs will be borne by CLEC.

11.34.5 To the extent that either Party is liable to any toll provider for fraud and to the extent that either Party could have reasonably prevented such fraud, the Party who could have reasonably prevented such fraud must indemnify the other for any fraud due to compromise of its network (e.g., clip-on, missing information digits, missing toll restriction, etc.).

11.34.6 If Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction of CLEC, take reasonable action to mitigate the fraud where such action is possible.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven (7) Days a week/twenty-four (24) hours a Day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or \*57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court

order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a twenty-four (24) hours a Day, seven (7) Days a week contact for processing such requests, should they occur.

## Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

### 12.1 Description

12.1.1 Qwest has developed and shall continue to provide Operational Support System (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation and support, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of the Change Management Process (CMP) set forth in Section 12.2.6.

12.1.2 Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing functions. For those functions with a retail analogue, such as pre-ordering and ordering and Provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and Provisioning of Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

### 12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

#### 12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface guidelines for EDI are based upon the Order and Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards

Institute/Accredited Standards Committee (ANSI ASC) X12 protocols. Exceptions to the above guidelines/standards shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Functions Pre Ordering - Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to Customer Service Records (CSRs) for Qwest retail or resale End User Customers. The information will include Billing name, service address, Billing address, service and feature subscription, Directory Listing information, and long distance Carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 For End User Customer locations, facility availability, Loop qualification, including resale-DSL, and Loop make-up information, including, but not limited to, Loop length, presence of Bridged Taps, repeaters, and loading coils.

12.2.1.4.8 A list of valid available CFAs for Unbundled Loops.

12.2.1.4.9 A list of one to five (1-5) individual Meet Points or a range of Meet Points for shared Loops.

12.2.1.4.10 Design Layout Record (DLR) Query which provides the layout for the local portion of a circuit at a particular location where applicable.

#### 12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use.

12.2.1.5.2 Reserved for Future Use.

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs for use by CLEC Customer service representatives at a single CLEC location,



CLEC shall use a T1 line instead of dial-up access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

#### 12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.7 Facility Based EDI Listing Process -- Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines/standards in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CMP process to consider any suggestions made by CLEC to improve or modify such plans. CLEC specific requests for modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all Provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours Provisioning services to CLEC on a non-discriminatory basis as it provides such Provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours Provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic Firm Order Confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest Due Date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual Firm Order Confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed. Qwest supplies two (2) separate

completion notices: 1) service order completion (SOC) which notifies CLEC that the service order record has been completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.

## **12.2.2 Maintenance and Repair**

12.2.2.1 Qwest shall provide electronic interface gateways, including an Electronic Bonding interface and a GUI interface, for reviewing a Customer's trouble history at a specific location, conducting testing of a Customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

## **12.2.3 Interface Availability**

12.2.3.1 Qwest shall make its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows as applicable.

## **12.2.4 Billing**

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local Billing information. EDI is an established standard under the auspices of the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically

for the purposes of Telecommunications Billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

### 12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

#### 12.2.5.1 Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as Billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, Billing account number (BAN) and bill cycle.

#### 12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given Day as captured or recorded by the network Switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in ATIS standard Electronic Message Interface (EMI) format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale;

- b) Unbundled Switch Port; and
- c) UNE-P for POTS.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a Carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the End User Customer has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Intentionally Left Blank;
- b) Resale;
- c) Unbundled Loop;
- d) Unbundled Line Side Switch Port;
- e) UNE-P for POTS;
- f) Line Sharing;
- g) UNE-P Line Splitting - Loss Report is provided only to the Customer of record; and
- h) Loop Splitting - Loss Report is provided only to the Customer of record

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Intentionally Left Blank;
- b) Resale;
- c) Unbundled Loop;
- d) Unbundled Line Side Switch; and

e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use. Qwest will make accessible to CLEC through electronic means the transmission method/media types available for these mechanized records.

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

- a) SAG provides Address and Serving Central Office Information.
- b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA Carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

## 12.2.6 Change Management

Qwest agrees to maintain a change management process, known as the Change Management Process (CMP), that is consistent with or exceeds industry guidelines, standards and practices to address Qwest's OSS, products and processes. The CMP shall include, but not be limited to, the following: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), CMP notifications, systems release life cycles, and communications; (ii) provide a forum for CLECs and Qwest to discuss and prioritize CRs, where applicable pursuant to Exhibit G; (iii) develop a mechanism to track and monitor CRs and CMP notifications; (iv) establish intervals where appropriate in the process; (v) processes by which CLEC impacts that result from changes to Qwest's OSS, products or processes can be promptly and effectively resolved; (vi) processes that are effective in maintaining the shortest timeline practicable for the receipt, development and implementation of all CRs; (vii) sufficient dedicated Qwest processes to address and resolve in a timely manner CRs and other issues that come before the CMP body; (viii) processes for OSS Interface testing; (ix) information that is clearly organized and readily accessible to CLECs, including the availability of web-based tools; (x) documentation provided by Qwest that is effective in enabling CLECs to build an electronic gateway; and (xi) a process for changing CMP that calls for collaboration among CLECs and Qwest and requires agreement by the CMP participants. Pursuant to the scope and procedures set forth in Exhibit G, Qwest will submit to CLECs through the CMP, among other things, modifications to existing products and product and technical documentation available to CLECs, introduction of new products available to CLECs, discontinuance of products available to CLECs, modifications to pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, introduction of pre-ordering, ordering/Provisioning, Maintenance/Repair or Billing processes, discontinuance of pre-ordering, ordering/Provisioning, maintenance/repair or Billing processes, modifications to existing OSS interfaces, introduction of new OSS interfaces, and retirement of existing OSS interfaces. Qwest will maintain as part of CMP an escalation process so that CMP issues can be escalated to a Qwest representative authorized to make a final decision and a process for the

timely resolution of disputes. The governing document for CMP, known as the "Change Management Process," is attached as Exhibit G (the "CMP Document"). The CMP Document (Exhibit G) is the subject of ongoing negotiations between Qwest and CLECs in the ongoing CMP redesign process. Not all of the sections of Exhibit G have been discussed or considered during the ongoing CMP redesign process, and the CMP Document will continue to be changed through those discussions. Exhibit G reflects the commitments Qwest has made regarding maintaining its CMP, and Qwest commits to implement agreements made in the CMP redesign process as soon as practicable after they are made. Following the completion of the CMP Document, Exhibit G will be subject to change through the CMP process, as set forth in the CMP Document. Qwest will maintain the most current version of the CMP Document on its wholesale website.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be implemented pursuant to the CMP set forth in Exhibit G.

12.2.6.3 Notwithstanding any other provisions in this Agreement, the CMP document attached as Exhibit G will be modified pursuant to the terms of Exhibit G, or the procedures of the redesign process and incorporated as part of the Agreement without requiring the execution or filing of any amendment to this Agreement.

#### **12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces**

12.2.7.1 Before CLEC implementation can begin, CLEC must completely and accurately answer the New Customer Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate New Customer Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

#### **12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces**

Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLEC demonstrates the ability to generate correct functional transactions for enhancements not previously certified. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the

disclosure document.

12.2.8.4 Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

## **12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces**

12.2.9.1 If using the GUI interface, CLEC will take reasonable efforts to train CLEC personnel on the GUI functions that CLEC will be using.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive EDI messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to controlled production and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment ("SATE") – Qwest's stand-alone testing environment will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The SATE provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted EDI transactions through the EDI system edits successfully for both new and existing releases. SATE uses test account data supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATE pre-order queries and orders are subjected to the same edits as production pre-order and order transactions. This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in Interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC's ability to send correct EDI transactions through the EDI system edits successfully. Interoperability testing requires the use of valid data in Qwest production systems. All Interoperability pre-order queries and order transactions are subjected to the same edits as production

orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest's production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4      Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5      If CLEC is using EDI, Qwest shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must make every effort to comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4      If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the EDI interface. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel where Technically Feasible.

12.2.9.4.1      For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.5      New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, where



Technically Feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two (2) months after the implementation of the next release. Otherwise, CLEC will be required to move its implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two (2) months after the next release implementation may continue certifying additional products and activities until two (2) months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the SATE or Interoperability environment before two (2) months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or Interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the Dispute Resolution procedures of this Agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.

12.2.9.9 Reserved for Future Use.

## **12.2.10 CLEC Support**

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include, but is not limited to, contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation and CLEC Help Desk.

12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: Resale/POTS; UNE POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLEC is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site. Qwest will provide Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

**12.2.11 Compensation/Cost Recovery**

Recurring and nonrecurring OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any recurring or nonrecurring OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

## **12.3 Maintenance and Repair**

### **12.3.1 Service Levels**

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Qwest provides for itself, its End User Customers, its Affiliates, or any other party. Qwest shall provide CLEC repair status information in substantially the same time and manner as Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party. Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

12.3.1.4 During the performance of Maintenance and Repair services, neither Party shall make disparaging remarks about the other Party. Neither Party shall provide information about its own products or services to End User Customers of the other Party during performance of maintenance and repair services; however, nothing in this Agreement shall be deemed to prohibit either Party from discussing its own products and services with End User Customers of the other Party seeking such information.

### **12.3.2 Branding**

12.3.2.1 Qwest shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded Maintenance and Repair forms. Qwest may not unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.

### **12.3.3 Service Interruptions**

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring Carriers involved in its services; 2) cause damage to the plant of the other Party, its

affiliated companies, or its connecting concurring Carriers involved in its services; 3) violate any Applicable Law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the Impaired Party) shall promptly notify the Party causing the Impairment of Service (the Impairing Party) of the nature and location of the problem. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service.

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to CLEC as itself, its End User Customers, its Affiliates, or any other party.

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

#### **12.3.4 Trouble Isolation**

12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes

at the Demarcation Point, NID, Point of Interface or such other test points as are identified in this Agreement or applicable Qwest publications. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.

12.3.4.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charge will apply if the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is found to be on Qwest's side of the Demarcation Point, Qwest will credit CLEC a Maintenance of Service charge or CLEC's actual costs, whichever is less, pursuant to Section 12.3.4.4. If the trouble is on the End User Customer's side of the Demarcation Point, and the CLEC authorizes Qwest to repair trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A in addition to the Maintenance of Service charge.

12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC's request, a Maintenance of Service Charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the repeat Trouble Report submitted within the time frame as set forth in Section 12.3.4.4 for the same line or circuit, Maintenance of Service charges shall not apply.

12.3.4.4 Where Qwest has billed CLEC for Maintenance of Service charges for a CLEC Trouble Report, Qwest will remove such Maintenance of Service charge from CLEC's account and CLEC may bill Qwest for its repeat dispatch(es) to recover a Maintenance of Service charge or CLEC's actual costs, whichever is less, if all of the following conditions are met:

- the repeat Trouble Report(s) is the same trouble as the prior Trouble Report (Repeat Trouble) as is demonstrated by CLEC's test results isolated between consecutive CLEC access test points; and
- the Repeat Trouble is reported within three (3) business days of the prior trouble ticket closure; and
- the Repeat Trouble has been found to be in facilities owned or maintained by Qwest or Qwest facilities leased by CLEC; and
- CLEC has provided the circuit specific test results on the prior and Repeat Trouble that indicates there is trouble in Qwest's network, consistent with the CLEC efficient use of space available for the purposes of providing test results on the Qwest standard trouble ticket form (If CLEC does not provide test results, Qwest will bill and CLEC will pay for optional testing where applicable); and
- CLEC's demonstration of its technician dispatch on the prior and Repeat Trouble; provided that such demonstration is sufficient when documented

by CLEC's records that are generated and maintained in the ordinary course of CLEC's business.

### **12.3.5 Inside Wire Maintenance**

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the End User Customer's Demarcation Point) for CLEC or its End User Customers.

### **12.3.6 Testing/Test Requests/Coordinated Testing/UNEs**

12.3.6.1 Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.2 Prior to Qwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Qwest's portion of the line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including Central Office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.

### **12.3.7 Work Center Interfaces**

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

### **12.3.8 Misdirected Repair Calls**

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective End User Customers with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End User Customers of CLEC shall be instructed to report all cases of trouble to CLEC. End User Customers of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

#### **12.3.9 Major Outages/Restoral/Notification**

12.3.9.1 Qwest will notify CLEC of major network outages in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party. This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain Proprietary Information such as Customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

#### **12.3.10 Protective Maintenance**

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Qwest shall provide notice of potentially CLEC Customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

#### **12.3.11 Hours of Coverage**

12.3.11.1 Qwest's repair operation is seven (7) Days a week, twenty-four (24) hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

#### **12.3.12 Escalations**

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Qwest employs for itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations may be initiated by either calling the trouble reporting center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than three (3) troubles in a rolling thirty (30) Day period, pursuant to Section 12.2.2.1.

#### **12.3.13 Dispatch**

12.3.13.1 Qwest will provide maintenance dispatch personnel in substantially the same time and manner as it provides for itself, its End User Customers, its Affiliates, or any other party.



12.3.13.2 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.

12.3.13.3 For POTS lines and designed service circuits, Qwest is responsible for all Maintenance and Repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC Customer premises without prior CLEC authorization. For dispatch to the CLEC Customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

#### **12.3.14 Electronic Reporting**

12.3.14.1 CLEC may submit Trouble Reports through the Electronic Bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

#### **12.3.15 Intervals/Parity**

12.3.15.1 Similar trouble conditions, whether reported on behalf of Qwest End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.

#### **12.3.16 Jeopardy Management**

12.3.16.1 Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

#### **12.3.17 Trouble Screening**

12.3.17.1 CLEC shall screen and test its End User Customer trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC may employ similar techniques in its centers.

#### **12.3.18 Maintenance Standards**

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported trouble, Qwest will inform CLEC of repair completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

#### **12.3.19 End User Customer Interface Responsibilities**

12.3.19.1 CLEC will be responsible for all interactions with its End User Customers including service call handling and notifying its End User Customers of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC End User Customers will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the Customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, Customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC Customers.

#### **12.3.20 Repair Call Handling**

12.3.20.1 Manually-reported repair calls by CLEC to Qwest will be answered with the same quality and speed as Qwest answers calls from its own End User Customers.

#### **12.3.21 Single Point of Contact**

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven (7) Days a week, twenty-four (24) hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

#### **12.3.22 Network Information**

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this

database.

12.3.22.4 ICONN data is updated in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

### **12.3.23 Maintenance Windows**

12.3.23.1 Generally, Qwest performs major Switch maintenance activities off-hours, during certain "maintenance windows". Major Switch maintenance activities include Switch conversions, Switch generic upgrades and Switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 am Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., Mountain Time. Although Qwest normally does major Switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Reserved for Future Use.

12.3.23.4 Planned generic upgrades to Qwest Switches are included in the ICONN database, available to CLEC via Qwest's Web site.

### **12.3.24 Switch and Frame Conversion Service Order Practices**

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one Switch and its replacement with another. Generic Switch software or hardware upgrades, the addition of Switch line and trunk connection hardware and the addition of capacity to a Switch do not constitute Switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the Switch Ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a Switch or frame conversion planned day of cut-over to the replacement frame(s) or Switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the Day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A Switch or frame conversion embargo is the time period that the Switch or frame Trunk Side facility connections are frozen to facilitate conversion from one Switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for Trunk Side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for Switch or frame Trunk Side facility augments to capacity or changes to Switch or frame Trunk Side facilities must be issued by CLEC with a Due Date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject Switch or frame Trunk Side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's Due Date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For Switch and Trunk Side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) Days before the Conversion Date.

12.3.24.4.3 For Switch and Trunk Side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) Days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old Switch or frame to the new Switch or frame, and sixty (60) Days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AML to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AML to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During Switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the Trunk Side of the Switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old Switch to the new Switch on a like-for-like basis, such embargo period shall extend from thirty (30) Days prior to the Conversion Date until five (5) Days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new Switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) Days prior to the Conversion Date until five (5) Days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for Switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain Due Dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, Billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during Switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the Switch or frame conversion. LSRs of any kind issued during the Switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for Switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) Days prior to conversion until two (2) Days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a Due Date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested Due Date, will be processed after the quiet period expires.

12.3.24.7.6 CLEC may request a Due Date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a Due Date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the Day prior to the scheduled LSR Due Date until 12 noon Mountain Time the Day after the scheduled LSR Due Date. Such changes shall be requested by issuing a supplemental LSR requesting a Due Date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic Switch software and hardware upgrades are not subject to the Switch conversion embargoes or quiet periods described above. If such generic Switch or software upgrades require significant activity related to

translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during Switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing Switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such Switch hardware additions.

### **Section 13.0 - ACCESS TO TELEPHONE NUMBERS**

**CLEC does not intend to order Access to Telephone Numbers; however in the event CLEC wishes to order Access to Telephone Numbers, the Parties will negotiate an appropriate amendment to this Agreement.**

#### **Section 14.0 - LOCAL DIALING PARITY**

**CLEC does not intend to order Local Dialing Parity; however in the event CLEC wishes to order Local Dialing Parity, the Parties will negotiate an appropriate amendment to this Agreement.**



## **Section 15.0 - Qwest Dex**

CLEC does not intend to order Qwest Dex; however in the event CLEC wishes to order Qwest Dex, the Parties will negotiate an appropriate amendment to this Agreement.

**Section 16.0 - REFERRAL ANNOUNCEMENT**

**CLEC does not intend to order Referral Announcement; however in the event CLEC wishes to order Referral Announcement, the Parties will negotiate an appropriate amendment to this Agreement.**

## Section 17.0 - BONA FIDE REQUEST PROCESS

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other interconnection agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. CLEC and Qwest may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the processing fee specified in Exhibit A of this Agreement. Qwest will refund one-half (1/2) of the processing fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:

17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;

17.2.2 the desired interface specification;

17.2.3 each requested type of Interconnection or access;

17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank; and

17.2.8 Intentionally Left Blank.

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar Days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) Day period that a BFR does not

qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) Day period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) Day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar Days, but in no case later than the end of such twenty-one (21) Day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar Days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has sixty (60) business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any time, but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a request for Interconnection, Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections 17.2.1 through 17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

17.15 Qwest will provide notice to CLECs of all BFRs which have been deployed or denied, provided, however, that identifying information such as the name of the requesting CLEC and the location of the request shall be removed. Qwest shall make available a topical list of the BFRs that it has received with CLECs under the Agreement or an Interconnection Agreement. The description of each item on that list shall be sufficient to allow CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of CLEC to provide sufficient details about the terms and conditions of any granted requests to allow CLEC to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this Agreement. CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to CLEC of the need therefore.

## Section 18.0 - AUDIT PROCESS

18.1 Nothing in this Section 18 shall limit or expand the Audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the Audit provisions in this Section 18. For purposes of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of the books, records, and other documents used in providing services under this Agreement. The term "Audit" also applies to the investigation of company records, back office systems and databases pertaining to Loop information.

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such Audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two (2) Audits requested by each Party under this Agreement in any twelve (12) month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least twenty-four (24) months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses in connection with conduct of the Audit or Examination. The requesting Party will pay for the

reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the non-requesting Party shall pay all of the requesting Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the Billing to the requesting Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) Days after the Parties' receipt of the final Audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest rate payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process; (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and Audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will

aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an Affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such Affiliate's disaggregated data, as required by reasonable needs of the Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

18.3.1 Either Party may request an Audit of the other's compliance with this Agreement's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting Party has provided to the other. Those Audits shall not take place more frequently than once in every three (3) years, unless cause is shown to support a specifically requested Audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this Section 18 that are not inconsistent herewith shall apply, except that in the case of these Audits, the Party to be audited may also request the use of an independent auditor.



## **Section 19.0 - CONSTRUCTION CHARGES**

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to Unbundled Loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to Unbundled Loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to Unbundled Loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of End User Customers and without discrimination among the various Carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence after receipt of payment. If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

## **Section 20.0 - SERVICE PERFORMANCE**

Performance Indicator Definitions (PIDs), in their current form, are included in Exhibit B of this Agreement. Subsequent changes to these PIDs that are made by the Long Term PID Administration or the Commission shall be incorporated into Exhibit B by reference. Modifications of PIDs that apply to the Qwest Performance Assurance Plan (QPAP) shall be made in accordance with Section 16.0 of Exhibit K.

## Section 21.0 - NETWORK STANDARDS

21.1 The Parties recognize that Qwest services and Network Elements have been purchased and deployed, over time, to Telcordia and Qwest technical standards. Specification of standards is built into the Qwest purchasing process, whereby vendors incorporate such standards into the equipment Qwest purchases. Qwest supplements generally held industry standards with Qwest Technical Publications.

21.2 The Parties recognize that equipment vendors may manufacture Telecommunications equipment that does not fully incorporate and may differ from industry standards at varying points in time (due to standards development processes and consensus) and either Party may have such equipment in place within its network. Except where otherwise explicitly stated within this Agreement, such equipment is acceptable to the Parties, provided said equipment does not pose a security, service or safety hazard to Persons or property.

21.3 Generally accepted and developed industry standards which the Parties agree to support include, but are not limited to:

### 21.3.1 Switching

GR-954-CORE LIDB

GR-2863-CORE AIN

GR-1428-CORE Toll Free Service

GR-1432-CORE TCAP

GR-317-CORE Call Control Using Integrated Services Digital User Part (ISDNUP)

GR-905-CORE ISUP

GR-1357-CORE Switched Fractional DS1

GR-1298-CORE AIN Switching System Generic Requirements

GR-1299-CORE AIN Service Control Point Adjunct Interface Generic Requirements

TR-NWT-001284 AIN 0.1 Switching System Generic Requirements

GR-905-CORE Common Channel Signaling Network Interface Specification

GR-1432-CORE CCS Network Interface Specification

Telcordia TR-TSY-000540, Issue 2R2

GR-305-CORE

GR-1429-CORE

GR-2863-CORE

FR-64 LATA LSSGR

GR-334-CORE Switched Access Service

TR-NWT-000335 Voice Grade Special Access Services

TR-TSY-000529 Public LSSGR

TR-NWT-000505 LSSGR Call Processing

FR-NWT-000271 OSSGR

TR-NWT-001156 OSSGR Subsystem

SR-TSY-001171 System Reliability Analysis

#### 21.3.2 Transport

Telcordia FR-440

TR-NWT-000499 (TSGR) Transport Systems Generic Requirements

GR-820-CORE Generic Transmission Surveillance; DS1 and DS3 Performance

GR-253-CORE Synchronous Optical Network Systems (SONET)

TR-NWT-000507 Transmission

TR-NWT-000776 NID for ISDN Subscriber Access

TR-INS-000342 High Capacity Digital Special Access Service

ST-TEC-000051 & 52 Telecommunications Transmission Engineering  
Handbooks Volumes 1 & 2

ANSI T1.102-1993 Digital Hierarchy – Electrical Interface, Annex B.

#### 21.3.3 Loops

TR-NWT-000057 Functional Criteria for Digital Loop Carrier Systems Issue 2

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital  
Subscriber Lines

GR-253-CORE SONET Common Generic Criteria

TR-NWT-000303 Integrated Digital Loop Carrier System Generic Requirements

TR-TSY-000673 Operations Interface for an IDLC System

GR-303-CORE Issue 1 Integrated Digital Loop Carrier System Generic Requirements

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

TR-TSY-000008 Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch

TR-NWT-008 and 303

TA-TSY-000120 Subscriber Premises or Network Ground Wire

GR-49-CORE Generic Requirements for Outdoor Telephone Network Interface Requirements

TR-NWT-000239 Indoor Telephone Network Interfaces

TR-NWT-000937 Generic Requirements for Outdoor and Indoor Building Entrance

TR-NWT-000133 Generic Requirements for Network Inside Wiring

#### 21.3.4 Local Number Portability

Number Portability Generic Switching and Signaling Requirements for Number Portability, Issue 1.00, February 12, 1996 (Editor – Lucent Technologies, Inc.);

Generic Requirements for SCP Application and GTT Function for Number Portability, Issue 0.95, Final Draft, September 4, 1996 (Editor – Ameritech Inc.);

Generic Operator Services Switching Requirements for Number Portability, Issue 1.00, Final Draft, April 12, 1996 (Editor – Nortel);

ATIS, TRQ No. 1, Technical Requirements for Number Portability Operator Services Switching Systems, April 1999;

ATIS, TRQ No. 2, Technical Requirements for Number Portability Switching Systems, April 1999;

ATIS, TRQ No. 3, Technical Requirements for Number Portability Database and Global Title Translation, April 1999;

FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Released July 2, 1996;

FCC First Memorandum Opinion and Order on Reconsideration; FCC 97-74; CC Docket 95-116, RM 8535; Released March 11, 1997.

FCC Second Report and Order, FCC 97-298; CC Docket 95-116, RM 8535; Released August 18, 1997.

21.4 The Parties will cooperate in the development of national standards for Interconnection elements as the competitive environment evolves. Recognizing that there are no current national standards for Interconnection Network Elements, Qwest has developed its own standards for some Network Elements, including:

Qwest Interconnection – Unbundled Loop #77384

Expanded Interconnection and Collocation for Private Line Transport and Switched Access Services - #77386

Unbundled Dedicated Interoffice Transport - #77389

Telecommunications Equipment Installation Guidelines - #77350.

21.5 Qwest Technical Publications have been developed to support service offerings, inform End User Customers and suppliers, and promote engineering consistency and deployment of developing technologies. Qwest provides all of its Technical Publications at no charge via website: <http://www.qwest.com/techpub/>.

## Section 22.0 - SIGNATURE PAGE

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

**(CLEC)**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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Name Printed/Typed

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