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Seattle, Washington 98191  
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**Maura E. Peterson**  
Paralegal  
Regulatory Law

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IDAHO PUBLIC  
UTILITIES COMMISSION



**CenturyLink™**

**ORIGINAL**

*Via Overnight delivery*

August 24, 2011

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074

Re: Case No. QWE-T-11-08  
Application for Approval of Interconnection Agreement  
Wholesale Carrier Services, Inc.

Dear Ms. Jewell:

Enclosed for filing is an original and three copies of the Application for Approval of an Interconnection Agreement between Qwest Corporation and Wholesale Carrier Services, Inc. Qwest respectfully requests that this matter be placed on the Commission Decision Meeting Agenda for expedited approval.

Please contact me if you have any questions concerning the enclosed. Thank you for your assistance in this matter.

Sincerely,

Maura E. Peterson

mep

cc: Service list

Lisa A Anderl (WSBA# 13236)  
CenturyLink  
1600 7th Ave, Room 1506  
Seattle, WA 98191  
Telephone: (206) 398-4500  
Facsimile: (206) 343-4040  
Lisa.anderl@centurylink.com

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**APPLICATION OF QWEST  
CORPORATION FOR APPROVAL OF  
THE INTERCONNECTION  
AGREEMENT FOR THE STATE OF  
IDAHO PURSUANT TO 47 U.S.C. §252(e)**

**CASE NO.:** QWE-T-11-08

**APPLICATION FOR APPROVAL OF  
INTERCONNECTION**

Qwest Corporation ("Qwest") hereby files this Application for Approval of Interconnection Agreement ("Agreement"). The Agreement with Wholesale Carrier Services, Inc. ("Wholesale Carrier Services") is submitted herewith.

This Agreement was reached through voluntary negotiations without resort to mediation or arbitration and is submitted for approval pursuant to Section 252(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act").

Section 252(e)(2) of the Act directs that a state Commission may reject an agreement reached through voluntary negotiations only if the Commission finds that: the agreement (or portion(s) thereof) discriminates against a telecommunications carrier not a party to this agreement; or the implementation of such an agreement (or portion) is not consistent with the public interest, convenience and necessity.

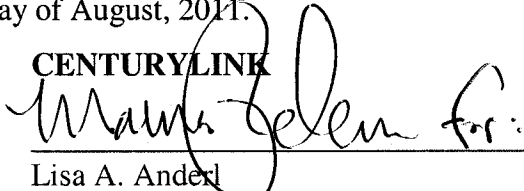
Qwest respectfully submits that this Agreement provides no basis for either of these findings, and, therefore requests that the Commission approve this Agreement expeditiously. This Agreement is consistent with the public interest as identified in the pro-competitive policies of the State of Idaho, the Commission, the United States Congress, and the Federal Communications Commission. Expeditious approval of this Agreement will enable Wholesale

Carrier Services, Inc. to interconnect with Qwest facilities and to provide customers with increased choices among local telecommunications services.

Qwest further requests that the Commission approve this Agreement without a hearing. Because this Agreement was reached through voluntary negotiations, it does not raise issues requiring a hearing and does not concern other parties not a party to the negotiations. Expeditious approval would further the public interest.

Respectfully submitted this 24<sup>th</sup> day of August, 2011.

**CENTURYLINK**

  
\_\_\_\_\_  
Lisa A. Anderl  
Attorney for CenturyLink

**CERTIFICATE OF SERVICE**

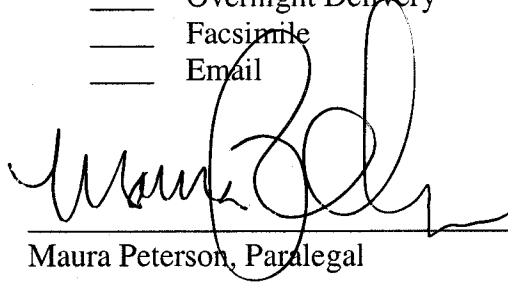
I hereby certify that on this 21<sup>st</sup> day of August, 2011, I served the foregoing **APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT** upon all parties of record in this matter as follows:

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074  
[jjewell@puc.state.id.us](mailto:jjewell@puc.state.id.us)

- Hand Delivery
- U. S. Mail
- Overnight Delivery
- Facsimile
- Email

Legal and Regulatory  
Wholesale Carrier Services, Inc.  
5471 N. University Drive  
Coral Springs, FL 33067

- Hand Delivery
- U. S. Mail
- Overnight Delivery
- Facsimile
- Email



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Maura Peterson, Paralegal



WHEREAS, CLEC desires to purchase from Qwest certain combinations of Network Elements, ancillary functions, and additional features, including without limitation, the local Loop, Port, switching, and Shared Transport.

Now, therefore, in consideration of the terms and conditions contained herein, CLEC and Qwest mutually agree as follows:

1. **Definitions.** Capitalized terms used herein are defined in Attachment 1.

2. **Effective Date.** This Agreement is effective upon the date that it is fully executed by all of the Parties and the applicable preorder information of the Interconnection Agreement(s) between the Parties is completed in the appropriate state(s) indicated above ("Effective Date").

3. **Term.** The term of this Agreement begins on the Effective Date and continues through December 31, 2013. In the event that at the expiration of this Agreement CLEC has any remaining Customers served under this Agreement, Qwest may immediately convert CLEC to an equivalent alternative service at market-based wholesale rates.

4. **Scope of Agreement; Service Provisioning; Controlling Documents; Change of Law; Eligibility for Services under this Agreement; Non-Applicability of Change Management Process.**

4.1 The Services ("Services") described in this Agreement will only be provided in Qwest's incumbent LEC service territory in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

4.2 In the event of a conflict in any term of any documents that govern the provision of Services hereunder, the following order of precedence will apply in descending order of control: an Attachment, Rate Sheet, this Agreement, and any effective Order Form hereunder. The Parties agree that the Services offered and purchased under this Agreement are subject to compliance with Applicable Law and obtaining any domestic or foreign approvals and authorizations required or advisable.

4.3 The provisions in this Agreement are intended to be in compliance with and based on the existing state of Applicable Law, including but not limited to Federal rules, regulations, and laws, as of the Effective Date ("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.

4.4 If any change in Applicable Law materially impairs a Party's ability to perform or obtain a benefit under this Agreement, both Parties agree to negotiate in good faith such changes as may be necessary to address such material impairment.

4.5 To receive services under this Agreement, CLEC must be a certified CLEC under Applicable Law. CLEC may not purchase or utilize Services covered under this Agreement for its own administrative use or for the use by an Affiliate.

4.6 Except as otherwise provided in this Agreement, the Parties agree that Services provided under this Agreement are not subject to the Qwest Wholesale Change Management Process ("CMP"), Qwest's Performance Indicators ("PID"), Performance Assurance Plan ("PAP"), or any other wholesale service quality standards, or liquidated July 25, 2011/mms/Wholesale Carrier Services, Inc.

Qwest QLSP™ MSA – (v5-6-11)

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damages and remedies. Except as otherwise provided, CLEC hereby waives any rights it may have under the PID, PAP and all other wholesale service quality standards to liquidated damages, and remedies with respect to Services provided pursuant to this Agreement. Any CLEC-proposed changes to the attributes of any Service or process enhancements will be communicated through the standard account interfaces. Change requests common to shared systems and processes subject to CMP will continue to be addressed via the CMP procedures.

5. **CLEC Information.** CLEC agrees to work with Qwest in good faith to promptly complete or update, as applicable, Qwest's "New Customer Questionnaire" to the extent that CLEC has not already done so, and CLEC shall hold Qwest harmless for any damages to or claims from CLEC caused by CLEC's failure to promptly complete or update the questionnaire.

6. **Financial Terms.**

6.1 The description of the Service and applicable rates are set forth in the Attachments hereto and Rate Sheets. The Parties agree that the referenced rates are just and reasonable.

6.2 **Taxes, Fees, and other Governmental Impositions.**

All charges for Services provided herein are exclusive of any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges ("Tax" or "Taxes"). Taxes 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 specifically permitted by Applicable Law to collect such Taxes from the purchasing Party, such Taxes shall be borne by the Party purchasing the services. Taxes shall be billed as a separate item on the invoice in accordance with Applicable Law. The Party billing such Taxes shall, at the written request of the Party being billed, provide the billed Party with detailed information regarding billed Taxes, including the applicable Tax jurisdiction, rate, and base upon which the Tax is 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 all reasonable 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 has paid the Tax contested. If the purchasing Party provides the selling Party with a resale or other exemption certificate, the selling Party shall exempt the purchasing Party if the selling Party accepts the certificate in good faith. If a Party becomes aware that any Tax is incorrectly or erroneously collected by that Party from the other Party or paid by the other Party to that Party, the Party that received such Tax shall refund the incorrectly or erroneously collected Tax or paid Tax to the other Party.

6.3 Each Party is solely responsible for any tax on its corporate existence, status or income and each Party shall be solely responsible for all taxes on its own business, the measure of which is its own net income or net worth and shall be responsible for any related tax filings, payment, protest, audit and litigation. Each Party shall be solely responsible for the billing, collection and proper remittance of all applicable Taxes relating to its own services provided to its own Customers.

7. **Intellectual Property.**

7.1 Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive Service solely as provided in this Agreement or as specifically required by the then-applicable federal rules and regulations relating to Services provided under this Agreement, nothing contained in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trademark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyright, trade name, trademark, service mark, trade secret, nor other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party without execution of a separate written agreement between the Parties.

7.2 Subject to the general Indemnity provisions of this Agreement, each Party (an Indemnifying Party) shall indemnify and hold the other Party (an Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriate or otherwise violate the intellectual property rights of any third party. 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 is not reasonably necessary to CLEC's use of the Services offered by Qwest under this Agreement; 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.

7.3 In the event of any claim, the Indemnifying Party may, at its sole option, obtain the right for the Indemnified Party to continue to use any infringing facility or service or replace or modify any infringing facility or service to make such facility or service non-infringing.

7.4 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 above and either the facility or service is held to be infringing by a court of competent jurisdiction or the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party will notify the Indemnified Party and the Parties will negotiate in good faith regarding reasonable modifications to this Agreement necessary to mitigate damage or comply with an injunction which may result from such infringement or allow cessation of further infringement.

7.5 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.

7.6 To the extent required under Applicable Law, Qwest shall use commercially reasonable efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with Services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such Services as contemplated hereunder and at least in the same manner used by Qwest for the Services provided hereunder. Qwest shall notify CLEC immediately in

the event that Qwest believes it has used its commercially reasonable efforts to obtain such rights, but has been unsuccessful in obtaining such rights. Nothing in this subsection shall be construed in any way to condition, limit, or alter a Party's indemnification obligations under Section 7.2, preceding.

7.7. Neither Party shall without the express written permission of the other Party, state or imply that it is connected, or in any way affiliated with the other or its Affiliates; it is part of a joint business association or any similar arrangement with the other or its Affiliates; the other Party and its Affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or with respect to its marketing, advertising or promotional activities or materials, state or imply that the services are in any way associated with or originated from the other Party or any of its Affiliates. In addition, CLEC, including its employees, representatives and agents, will not state or otherwise indicate, directly or indirectly, to its end-users or prospective end-users: (a) that they will be Qwest customers or that they may obtain Qwest service from CLEC or (b) that CLEC has or the end-user will have any relationship with Qwest. Without limiting the foregoing, CLEC must not use a name, trademark, service mark, copyright or any other intellectual property owned by Qwest or its Affiliates, except that CLEC may communicate that Qwest is one of the underlying carriers from which CLEC purchases services if CLEC has obtained the prior written consent of the Qwest Law Department. This is a non-exclusive agreement. Nothing in this Agreement prevents Qwest from offering to sell or selling any services to other parties.

7.8 Nothing in this Section prevents either Party from truthfully describing the Services it uses to provide service to its End User Customers, provided it does not represent the Services as originating from the other Party or its Affiliates or otherwise attempt to sell its End User Customers using the name of the other Party or its Affiliates. Qwest's name and the names of its affiliates are proprietary and nothing in this Agreement constitutes a license authorizing their use, and in no event will CLEC, including its employees, representatives and agents, attempt to sell any Services to its end-users using the name, brand or identity of Qwest or Qwest's Affiliates in any way.

7.9 Because a breach of the material provisions of this Section 7 may cause irreparable harm for which monetary damages may be inadequate, in addition to other available remedies, the non-breaching Party may seek injunctive relief.

## **8. Financial Responsibility, Payment and Security.**

8.1 **Payment Obligation.** Amounts payable under this Agreement are due and payable within thirty (30) Days after the date of invoice ("Payment Due Date"). If the Payment Due Date falls on a Sunday or on a holiday which is observed on a Monday, the payment date will be the first non-holiday day following such Sunday or holiday. If such a payment date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-holiday day preceding such Saturday or holiday. For invoices distributed electronically, the date of the invoice date is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If CLEC fails to make payment on or before the Payment Due Date, Qwest may invoke all available rights and remedies.

8.2 **Cessation of Order Processing.** Qwest may discontinue processing orders for Services for any breach by CLEC of this Agreement, including without limitation, the failure of CLEC to make full payment for Services, less any good faith disputed amount as provided for in this Agreement, within thirty (30) Days following the Payment Due Date; provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to discontinuing the processing of orders for Services. If Qwest does not refuse to accept additional

July 25, 2011/mms/Wholesale Carrier Services, Inc.

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orders for Services on the date specified in the ten (10) business days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders for Services from CLEC without further notice. For order processing to resume, CLEC will be required to cure any breach and make full payment of all past-due charges for Services not disputed in good faith under this Agreement, and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, Qwest reserves the right to seek equitable relief including injunctive relief and specific performance.

**8.3 Disconnection.** Qwest may disconnect any Services provided under this Agreement for any breach by CLEC of this Agreement that is not cured by CLEC in accordance with Section 11 herein, including without limitation, failure by CLEC to make full payment for such Services, less any good faith disputed amount as provided for in this Agreement, within sixty (60) Days following the Payment Due Date provided that Qwest has first notified CLEC in writing at least ten (10) business days prior to disconnecting Services. CLEC will pay the applicable charge set forth in the Rate Sheet required to reconnect Services for each End User Customer disconnected pursuant to this Section 8.3. In case of such disconnection, all applicable undisputed charges, including termination charges, will become due and payable. If Qwest does not disconnect CLEC's Service on the date specified in the ten (10) business days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all Services. For reconnection of the Service to occur, CLEC will be required to make full payment of all past and current undisputed charges under this Agreement for Services and Qwest may require a deposit (or recalculate the deposit) pursuant to Section 8.5. In addition to other remedies that may be available at law or equity, Qwest reserves the right to seek equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing, Qwest will not effect a disconnection pursuant to this Section 8.3 in such manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC's reasonable diligence in effecting such compliance.

**8.4 Billing Disputes.** Should CLEC dispute, in good faith, and withhold payment on any portion of the charges under this Agreement, CLEC will notify Qwest in writing within fifteen (15) Days following the Payment Due Date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC will pay all undisputed amounts due to Qwest. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide reasonably requested documentation regarding the amount disputed, and work in good faith in an effort to resolve and settle the dispute through informal means prior to invoking any other rights or remedies.

A. If CLEC 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 Qwest, CLEC will pay the disputed amount and applicable late payment charges no later than the next Bill Date following the resolution. CLEC may not continue to withhold the disputed amount following the initial resolution while pursuing further dispute resolution. If the disputed charges have been withheld and the dispute is resolved in favor of CLEC, Qwest will credit CLEC's bill 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.

B. If CLEC pays the disputed charges and the dispute is resolved in favor of Qwest, no further action is required. If CLEC pays the charges disputed at the time of payment or at any time

thereafter, and the dispute is resolved in favor of the CLEC, Qwest will adjust the Billing, usually within two Billing cycles after the resolution of the dispute, as follows: Qwest will credit the CLEC's bill for the disputed amount and any associated interest; or if the disputed amount is greater than the bill to be credited, pay the remaining amount to CLEC.

C. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, will any late payment charges be assessed on any previously assessed late payment charges.

D. If CLEC fails to dispute a rate or charge within 60 Days following the invoice date on which the rate or charge appeared, adjustment will be made on a going-forward basis only, beginning with the date of the dispute.

**8.5 Security Deposits.** In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of this Agreement, Qwest may request a security deposit. A "material adverse change in financial condition" means CLEC is a new CLEC with no established credit history, or is a CLEC that has not established satisfactory credit with Qwest, or the Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders by Qwest due to a previous failure to pay undisputed charges in a timely manner or due to the failure by CLEC to cure a breach of this Agreement in a timely manner. Qwest may require a deposit to be held as security for the payment of charges before the orders from CLEC will be provisioned and completed or before reconnection of Service. "Repeatedly Delinquent" means any payment of a material amount of total monthly Billing under this Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The deposit may not exceed the estimated total monthly charges for a two (2) month period based upon recent Billing. The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Qwest, or some other form of mutually acceptable security such as a cash deposit. The deposit may be adjusted by CLEC's actual monthly average charges, payment history under this Agreement, or other relevant factors, but in no event will the security deposit exceed five million dollars (\$5,000,000.00). Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to the terms and provisions of Section 8.2 and Section 8.3 of this Agreement.

**8.6 Interest on Deposits.** Any interest earned on cash deposits will be credited to CLEC in the amount actually earned or at the rate set forth in Section 8.7 below, whichever is lower, except as otherwise required by law, provided that, for elimination of doubt, the Parties agree that such deposits are not subject to state laws or regulations relating to consumer or End User Customer cash deposits. Cash deposits and accrued interest, if applicable, will be credited to CLEC's account or refunded, as appropriate, upon the earlier of the expiration of the term of this Agreement or the establishment of satisfactory credit with Qwest, which will generally be one full year of consecutive timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, CLEC may request, and Qwest 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.

**8.7 Late Payment Charge.** If any portion of the payment is received by Qwest after the Payment Due Date, or if any portion of the payment is received by Qwest in funds that are not immediately available, then a late payment charge will be due to Qwest. The late payment charge is the portion of the payment not received by the Payment Due Date multiplied by a late factor. The late factor is the



lessor of (i) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest; or (ii) 0.000407 per Day, compounded daily for the number of Days from the Payment Due Date to and including the date that the CLEC actually makes the payment to Qwest.

8.8 CLEC must not remit payment for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate Qwest to provide certain information or perform certain functions unless those functions and obligations are specifically agreed to by the parties in this Agreement or in an amendment to this Agreement.

9. **Conversions.** If CLEC is obtaining services from Qwest under an arrangement or agreement that includes the application of termination liability assessment (TLA) or minimum period charges, and if CLEC wishes to convert such services to a Service under this Agreement, the conversion of such services will not be delayed due to the applicability of TLA or minimum period charges. The applicability of such charges is governed by the terms of the original agreement, Tariff or arrangement. Nothing herein will be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

10. **Customer Contacts.** CLEC, or CLEC's authorized agent, are the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC will inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party will make disparaging remarks about the other Party. 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.

10.1 In the event Qwest terminates Service to CLEC for any reason, CLEC will provide any and all necessary notice to its End User Customers of the termination. In no case will Qwest be responsible for providing such notice to CLEC's End User Customers.

11. **Default and Breach.** 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 continues for thirty (30) Days after written notice thereof, the other Party may terminate this Agreement and seek relief in accordance with any remedy available under this Agreement, including without limitation, the Dispute Resolution provisions of Section 25 herein and, in addition to the foregoing, Qwest may cease to accept orders from CLEC for Services in accordance with Section 8.2 above. The remedies available to each Party pursuant to this Agreement are not to be considered exclusive of one another and will be cumulative.

12. **Limitation of Liability.**

12.1 CLEC's exclusive remedies for claims under this Agreement are limited to CLEC's proven direct damages unless CLEC's damages are otherwise limited by this Agreement to outage credits or other service credits, in which case Qwest's total liability will not exceed the aggregate amount of any applicable credits due.

12.2 Except for indemnification and payment obligations under this Agreement, neither Party shall be liable to the other for indirect, incidental, consequential, exemplary, punitive, 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.

12.3 Nothing contained in this Section shall limit either Party's liability to the other for willful misconduct, provided that, a Party's liability to the other Party pursuant to the foregoing exclusion, other than direct damages, will be limited to a total cap equal to one hundred per cent (100%) of the annualized run rate of total amounts charged by Qwest to CLEC under this Agreement.

13. **Indemnity.**

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

A. Each Party (the Indemnifying Party) 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.

B. In the case of claims or losses 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 (each, an 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 was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or 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.

13.2 The indemnification provided herein is conditioned upon the following:

A. The Indemnified Party will promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party will 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.

B. If the Indemnifying Party wishes to defend against such action, it will give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party has 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 has 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 will be available to the other Party with respect to any such defense.

C. In no event will the Indemnifying Party settle or consent to any judgment for relief other than monetary damages pertaining to any such action without the prior written consent of the Indemnified Party. In the event that the Indemnified Party withholds consent, the Indemnified 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.

**14. Limited Warranties.**

14.1 Each Party will provide suitably qualified personnel to perform its obligations under this Agreement and provide all Services hereunder in a good and workmanlike manner and in material conformance with all Applicable Laws and regulations.

14.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, QWEST SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER. QWEST SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

**15. Relationship.** Except to the limited extent expressly provided in this Agreement, neither Party has the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other or otherwise act on the other's behalf. The relationship arising from this Agreement does not constitute an agency, joint venture, partnership, employee relationship or franchise. Qwest is acting as an independent contractor and will have exclusive control of the manner and means of performing its obligations. Notwithstanding anything herein to the contrary, Qwest reserves the right, in its sole discretion, to modify or change the name of the Services.

**16. Assignment.**

16.1 CLEC may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Qwest, which consent will not be unreasonably withheld. Notwithstanding the foregoing and subject to prior credit review, submission of appropriate legal documentation (including, but not limited to, any appropriate Secretary of State or other filings or documents specified by Qwest) and approval by Qwest of CLEC's proposed assignee, CLEC may assign this Agreement without prior written consent of Qwest to any Affiliate, successor through merger, or acquirer of substantially all of its assets; and Qwest may assign this Agreement without prior written consent to any Affiliate, successor through merger, or acquirer of substantially all of its business assets; provided that in all cases the

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(IA=CDS-110722-0006); (MT=CDS-110722-0007); (ND=CDS-110722-0008); (NM=CDS-110722-0009);  
(ID=CDS-110722-0010); (SD=CDS-110722-0011); (UT=CDS-110722-0012); (WY=CDS-110722-0013)

assignee of CLEC or Qwest, as applicable, acknowledge in writing its assumption of the obligations of the assignor hereunder. Any attempted assignment in violation hereof is of no force or effect and is void. Without limiting the generality of the foregoing, this Agreement will be binding as to the Parties' respective successors and assigns.

16.2 In the event that Qwest transfers to any unaffiliated party exchanges, including End User Customers that CLEC serves in whole or in part through Services provided by Qwest under this Agreement, Qwest will ensure that the transferee serves as a successor to and fully performs all of Qwest's responsibilities and obligations under this Agreement for a period of ninety (90) Days from the effective date of such transfer or until such later time as the FCC may direct pursuant to the FCC'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 will use its best efforts to facilitate discussions between CLEC and the transferee with respect to the transferee's assumption of Qwest's obligations after the transition period set forth above in accordance with the terms and provisions of this Agreement.

**17. Reporting Requirements.** If reporting obligations or requirements are imposed upon either Party by any third party or regulatory agency in connection with this Agreement or the Services, including use of the Services by CLEC or its End Users, the other Party agrees to assist that Party in complying with such obligations and requirements, as reasonably required by that Party.

**18. Survival.** The expiration or termination of this Agreement does not relieve either Party of those obligations that by their nature are intended to survive.

**19. Confidentiality/ Nondisclosure.**

19.1 Neither Party will, without the prior written consent of the other Party (a) issue any public announcement regarding, or make any other disclosure of the terms of, this Agreement or use the name or marks of the other Party or its Affiliates; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other Party. Consent may only be given on behalf of a Party by its Legal Department. However, a Party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the disclosing Party gives the non-disclosing Party reasonable prior written notice and the receiving Party will cooperate with the disclosing Party to seek or take appropriate protective measures and will make such disclosure in a manner to best protect the Confidential Information from further disclosure. Notwithstanding the foregoing, if reporting or filing obligations or requirements are imposed upon Qwest by any third party or regulatory agency in connection with this Agreement, CLEC agrees to assist Qwest in complying with such obligations and requirements, as reasonably required by Qwest and to hold Qwest harmless for any failure by CLEC in this regard. Qwest's compliance with any regulatory filing obligation will not constitute a violation of this section. Each Party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the Party would use to protect its own.

19.2 All Confidential Information will remain the property of the disclosing Party. A Party who receives Confidential Information via an oral communication may request written confirmation that the material is Confidential Information. A Party who delivers Confidential Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Confidential Information. Each Party has the right to

