

## CARRIER-TO-CARRIER AGREEMENT CHECKLIST

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INSTRUCTIONS: Please complete all applicable parts of this form and submit it with related materials when filing a carrier-to-carrier agreement pursuant to 47 U.S.C. 252 and OAR 860-016-0000 et al. The Commission will utilize the information contained in this form to determine how to process the filing. **Unless you request otherwise in writing, the Commission will serve all documents related to the review of this agreement electronically to the e-mail addresses listed below.**

**1. PARTIES**                      *Competitive Carrier*                                              *Incumbent Local Exchange Carrier*

Name of Party:

Contact for Processing Questions:

Name:

Telephone:

E-mail:

Contact for Legal Questions (if different):

Name:

Telephone:

E-mail:

Other Persons wanting E-mail service of documents (if any):

Name:

E-mail:

**2. TYPE OF FILING**      NOTE: Parties making multiple requests (such as seeking to adopt a previously approved agreement and Commission approval of new negotiated amendments to that agreement) should submit a separate checklist for each requested action.

Adoption: Adopts existing carrier-to-carrier agreement approved by the Commission.

- Docket ARB
- Parties to prior agreement                                              &

New Agreement: Seeks approval of new negotiated agreement.

**Does adoption or agreement replace an existing agreement between the parties?**

- NO
- YES, Docket ARB

Amendment: Amends an existing carrier-to-carrier agreement.

Docket ARB

**TERMS AND CONDITIONS FOR INTERCONNECTION,  
UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES,  
AND RESALE OF TELECOMMUNICATIONS SERVICES**

**BETWEEN**

**Malheur Home Telephone Company**

**and**

**Lightspeed Networks, Inc. dba LS Networks**

**For the State of Oregon**

**Agreement Number  
CDS-080924-0001**

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EXHIBIT K	Intentionally Left Blank

## Section 1.0 - GENERAL TERMS

1.1 This Agreement for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is between Lightspeed Networks, Inc. dba LS Networks ("CLEC"), an Oregon corporation, with offices at 921 SW Washington St, Suite 370 Portland, OR 97205 and Malheur Home Telephone Company (Malheur), a Oregon Corporation with offices at 225 SW 2<sup>nd</sup> St., Ontario, Oregon 97914, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Malheur's obligations under Sections 222, 251(a), (b), and (c), 252, and other relevant provisions of the Act and the rules and regulations promulgated there under.

1.2 Intentionally Left Blank.

1.3 This Agreement sets forth the terms, conditions and pricing under which Malheur 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 Malheur is providing local Exchange Service at that time, and for which Malheur is the incumbent Local Exchange Carrier within the state of Oregon, for purposes of providing local Telecommunications Services.

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1.7 Intentionally Left Blank

1.8 With respect to the terms and provisions of this Agreement, Malheur has negotiated the Agreement in its entirety, and the inclusion of any particular provision, or rate, term and condition, is not evidence of the reasonableness thereof when considered apart from all other provisions of the Agreement.

## **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 and federal rules, regulations, and laws as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Malheur or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Malheur or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Malheur 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. Where a Party provides notice to the other Party within thirty (30) Days of the effective date of an order issuing a legally binding change, any resulting 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. In the event neither Party provides notice within thirty (30) Days, the

effective date of the legally binding change shall be the Effective Date of the amendment unless the Parties agree to a different date. 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. 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, Section 2.2 above, nothing in this Agreement shall be deemed an admission by Malheur or CLEC concerning the interpretation or effect of any rule, regulation, statute, or interpretations thereof, including but not limited to the FCC's Triennial Review Order and/or its Triennial Review Remand Order and state rules, regulations, and laws as they may be issued or promulgated. Nothing in this Agreement shall preclude or estop Malheur or CLEC from taking any position in any forum concerning the proper interpretation or effect of any rule, regulation, or statute, or concerning whether the foregoing 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 Malheur's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Malheur documentation relating to Malheur'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, Malheur 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 Malheur'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 Malheur'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 Malheur 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 Malheur 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 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 Malheur. 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.

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## 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 Malheur 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. Malheur'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 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 Malheur 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.

"Business Line" means a Malheur-owned switched access line used to serve a business customer, whether by Malheur itself or by CLEC that leases the line from Malheur. The number

of Business Lines in a Wire Center shall equal the sum of all Malheur business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Malheur end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

"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" (or "Tandem 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 Malheur'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 Malheur provides space in Malheur Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Malheur Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Malheur's Wire Center where CLEC's fiber facility meets Malheur's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Malheur will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. § 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 Malheur, 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.

"Commission" means the Public Utility Commission of Oregon.

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"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. 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.

"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).

"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.

"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 CLEC's Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Malheur 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" means Malheur transmission facilities between Wire Centers or switches owned by Malheur, or between Wire Centers or switches owned by Malheur and switches owned by CLEC, including, but not limited to, DS1, DS3, and OCn-capacity level services, as well as Dark Fiber, dedicated to a particular End User Customer or carrier.

"Demarcation Point" means the point where Malheur 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 twenty-four (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 twenty-eight (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 (demultiplexing). 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 an End User 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 (1) 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 two (2) copper pairs, or future E1 service over three (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.

"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 Sections 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" or "Listings" are any information identifying the listed names of subscribers of a Telecommunications Carrier and such subscribers' telephone numbers, addresses, 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: (1) that the Telecommunications Carrier provides or uses for the purpose of publishing the Listings in any directory format; or (2) that the Telecommunications Carrier provides or uses in Directory Assistance Service, Directory Assistance List Service, or for other lawful purposes.

"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).

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

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

"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" shall have the same meaning as 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-based Collocator" means any carrier, unaffiliated with Malheur, that maintains a Collocation arrangement in a Malheur Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Malheur Wire Center premises; and (3) is owned by a party other than Malheur or any affiliate of Malheur, except as set forth in this paragraph. Dark fiber obtained from Malheur on an indefeasible right of use basis shall be treated as non-Malheur fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this definition, the term "affiliate" is defined by 47 U.S.C. § 153(1).

"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 Malheur to wholesale customers or retail End User Customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include Access Services, private lines, retail services, and resold services.

"Firm Order Confirmation" or "FOC" means the notice Malheur provides to CLEC to confirm that CLEC's Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Malheur 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 (two (2) bearer and one (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 twenty-three (23) bearer channels and one (1) data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all twenty-four (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 Malheur 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 Malheur 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.

"Interexchange Service" means telecommunications service between stations in different exchange areas. *Modification of Final Judgment*, § IV(K), *reprinted in United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Interim Number Portability" or "INP" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network with as little impairment of quality, reliability and convenience to the customer as possible, but does not comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23(a).

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

"Interoperability" means the ability of a Malheur 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.)

"IntraLATA LEC Toll" means IntraLATA Toll traffic carried solely by a Local Exchange Carrier and not by an IXC.

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

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

"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 a geographically defined area as established by the effective tariffs of Malheur as approved 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 Malheur Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Malheur Serving Wire Center.

"Local Interconnection Service" or "LIS" is the Malheur 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.

"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.

"Local Tandem Switch" is a Malheur switch used to connect and switch trunk circuits between End Office Switches for traffic within an EAS/Local calling area.

"Location Routing Number" or "LRN" means a unique ten- (10)-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This ten- (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.

"Long Distance Service" (see "Interexchange Service").

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

"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.

"Main Distribution Frame" or "MDF" means a Malheur distribution frame (e.g., COSMIC™ frame) used to connect Malheur cable pairs and line and trunk equipment terminals on a Malheur 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 Miscellaneous Charge that relates to trouble isolation work performed by Malheur. Basic Maintenance of Service charges apply when the Malheur technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the Malheur technician performs work on a business day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply when the Malheur technician performs work on either a Sunday or Malheur recognized holiday.

"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 (2) networks, designated by two (2) 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" or "JPSA" refers to an arrangement whereby two (2) or more LECs (including a LEC and CLEC) receive traffic in the same LATA that the call is to be terminated in or originated from, and 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 switched access Tariffs.

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

"Mid-Span Meet POI" A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between the Malheur Serving Wire Center location and the location of the CLEC switch or other equipment located within the area served by the Malheur Serving Wire Center.

"Miscellaneous Charges" mean charges that apply for miscellaneous services provided at CLEC's request or based on CLEC's actions that result in miscellaneous services being provided by Malheur, as described in this Agreement.

"Mobile Wireless Service" means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the service offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

"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 (2) or more LECs (including a LEC and a CLEC), or by one (1) LEC in two (2) 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 (2) 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 Malheur'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 Malheur's and CLEC's OSS application, the processing time for Malheur's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two (2) and four (4) 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 End User Customer premises wiring to Malheur'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-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

"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 (1) of the seven (7) regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven (7) original Bell Operating

Company regions so as to cover the fifty (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- (3)-digit Switch entity code which is defined by the "D," "E" and "F" digits of a ten- (10) digit telephone number within the NANP.

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

"Optional Testing" is testing conducted by Malheur, at the request of CLEC, that is in lieu of testing CLEC should complete to isolate trouble to the Malheur network prior to submitting a trouble ticket to Malheur.

"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 Parameter" or "OLIP" is a CCS SS7 signaling parameter that identifies the line class of service, i.e., originating screening and routing translation.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility Provisioning standard with the statistical probability of no more than one (1) call in one hundred (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 Malheur will be provided in "substantially the same time and manner" to that which Malheur provides to itself, its End User Customers, its Affiliates or to any other party.

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

"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.

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

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

"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.

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

"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 Malheur's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Malheur that house its network facilities; all structures that house Malheur 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 Malheur that is adjacent to these Central Offices, Wire Centers, buildings and structures.

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

"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-NXX codes which have been assigned to a LEC for its provision of Telephone Exchange Service.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Malheur 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 Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network. If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

"Remote Premises" means all Malheur Premises, other than Malheur Wire Centers or adjacent to Malheur 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 Malheur'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.

"Route" is a transmission path between one of Malheur's Wire Centers or switches and another of Malheur's Wire Centers or Switches. A route between two (2) points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch "X"). Transmission paths between identical end points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

"Scheduled Issued Date" or "SID" means the date the order is entered into Malheur'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 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 Malheur building from which dial tone for local Exchange Service would normally be provided to a particular End User Customer premises.

"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.

"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.

"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" 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 Malheur 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.

"Tier 1 Wire Centers" means those Malheur Wire Centers that contain at least four (4) Fiber-based Collocators, at least thirty-eight thousand (38,000) Business Lines, or both. Tier 1 Wire Centers also are those Malheur tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

"Tier 2 Wire Centers" means those Malheur Wire Centers that are not Tier 1 Wire Centers, but contain at least three (3) Fiber-based Collocators, at least twenty-four thousand (24,000) Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

"Tier 3 Wire Centers" means those Malheur Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

"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 Isolation Charge" – see "Maintenance of Service."

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

"Unbundled Network Element" ("UNE") is a Network Element that has been defined by the FCC as a Network Element to which Malheur is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Malheur is obligated to provide only pursuant to Section 271 of the Act.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Malheur'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.

"VNXX Traffic" is all traffic originated by a Party's End User Customer and dialed with a local dialing pattern that is not terminated to the other Party's End User Customer physically located within the same Malheur Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed. VNXX does not include originating 8XX traffic.

"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 Malheur 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, Malheur 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 structures are no longer in current use.

"Wire Center" means the location of a Malheur local switching facility containing one or more Central Offices, as defined in the Appendix to Part 36, Chapter 1 of Title 47 of the Code of Federal Regulations. Wire Center boundaries define the area in which all End User Customers served by a given Wire Center are located.

"Wire Center Docket" means Commission Docket No. UM 1251 entitled "In the Matter of COVAD COMMUNICATIONS COMPANY; ESCHOLON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; And XO COMMUNICATIONS SERVICES, INC. Request for Commission Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Malheur files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

"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 Malheur, 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.

## 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) 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) 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) Days of written notice, or if such non-compliance cannot be corrected within fifteen (15) 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, Malheur shall not assess any charges against CLEC for services, facilities, Unbundled Network Elements, ancillary services and other related work 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 orders 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 January 30, 2012.

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. However, nothing relieves CLEC from fulfilling the obligations incurred under the prior Agreement.

## **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) Days after the date of invoice (Payment Due Date). If a Payment Due Date falls on a Sunday, or on a holiday which is observed on a Monday, the payment date shall be the first non-holiday day following such Sunday or holiday. If a Payment Due 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 invoice date is the same as if the invoice were billed on paper, not the date the electronic delivery occurs. If either Party fails to make payment on or before the Payment Due Date, the other Party may invoke all available rights and remedies.

5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the services, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within thirty (30) Days following the payment due date provided the Billing Party has notified the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for services. If the Billing Party does not refuse to accept additional orders for the 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 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 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 services for failure by the billed Party to make full payment, less any good faith disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) Days following the payment due date. The billed Party will pay the applicable reconnect charge set forth in Exhibit A required to reconnect each service disconnected pursuant to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the 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 services of the non-complying Party without further notice. For reconnection of the services to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the 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. If the billed Party is a new CLEC customer of Malheur, 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 Malheur dispute, in good faith, any portion of the charges under this Agreement, the Parties will notify each other in writing within fifteen (15) Days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Malheur shall pay all undisputed amounts due. Both CLEC and Malheur 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.

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 next 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 disputed charges and the dispute is resolved in favor of the Billing Party, no further action is required. 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 will adjust the Billing, usually within two (2) Billing cycles, after the resolution of the dispute, as follows:

- (1) The Billing Party will credit the Billed Party's bill for the disputed amount and any associated interest; or
- (2) If the disputed amount is greater than the bill to be credited, pay the remaining amount to the Billed Party.
- (3) 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.

5.4.4.3 If the Billed Party fails to dispute a rate or charge within sixty (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.

5.4.5 In the event of a material adverse change in CLEC's financial condition subsequent to the Effective Date of this Agreement, Malheur 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 Malheur, 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 Malheur due to a previous failure to pay undisputed charges in a timely manner. Malheur 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 the Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The initial deposit may not exceed the estimated total monthly charges for a two (2) month period

based upon recent Billing. 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). The deposit may be an irrevocable bank letter of credit, a letter of credit with terms and conditions acceptable to Malheur, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to Sections 5.4.2 and 5.4.3 of this Agreement.

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 CLEC'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 Malheur, which will generally be one full year of timely payments of undisputed amounts in full by CLEC. Upon a material change in financial standing, including factors referenced in Section 5.4.5 above, CLEC may request and the Malheur 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 Malheur may review CLEC'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 or another amount, if approved by the Commission.

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 CLEC shall be responsible for notifying its End User Customers of any pending disconnection of a service by CLEC, if necessary, to allow those End User Customers to make other arrangements for such 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 A-VII 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 ten billion dollars (\$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 ten billion dollar (\$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 one hundred thousand dollars (\$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 one million dollars (\$1,000,000) each occurrence and two million dollars (\$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 one million dollars (\$1,000,000) per occurrence for bodily injury and property damage.

5.6.1.4 Umbrella/Excess Liability insurance in an amount of ten million dollars (\$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 eleven million dollars (\$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 certificate(s) upon request. Such certificates shall (1) name the other Party as an additional insured under commercial general liability coverage; (2) provide thirty (30) Days prior written notice of cancellation of 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. Payments pursuant to the QPAP shall not be counted against the limit provided for in this Section.

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 Network 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 Intentionally Left Blank.

5.9.1.4 Intentionally Left Blank.

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 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.

## **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, Malheur shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Malheur 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 Malheur for the facilities and services provided hereunder. Malheur shall notify CLEC immediately in the event that Malheur believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Malheur covenants that it will not enter into any licensing agreements with respect to any Malheur 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. Malheur 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 Malheur's network provide Malheur with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Malheur 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 Malheur pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of Malheur 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 Malheur 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 Malheur.

5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the Malheur 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 Malheur for its prior written approval.

5.10.6.5 If Malheur determines that CLEC's use of the Authorized Phrase causes End User Customer confusion, Malheur 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 Malheur or destroy all materials in its possession or control displaying the Authorized Phrase.

5.10.7 Malheur 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 Malheur associated with the Unbundled Network Elements provided by Malheur under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Malheur shall within ten (10) business days, unless there are extraordinary circumstances in which case Malheur 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 Malheur's use of the intellectual property. Except to the extent Malheur 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, Malheur shall provide copies of any relevant agreements or licenses governing Malheur's use of the intellectual property to CLEC. To the extent Malheur is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Malheur 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 Malheur.

## **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 Malheur transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through facilities or services provided by Malheur under this Agreement, the transferee shall be deemed a successor to Malheur'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, Malheur shall use its best efforts to facilitate discussions between CLEC and the transferee with respect to transferee's assumption of Malheur'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 Section 252(i) of the Act and 47 C.F.R. § 51.809.

### **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) 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) 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 Malheur 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 Malheur, to Malheur's legal personnel in connection with their representation of Malheur in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which CLEC provided it to Malheur 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, Malheur may provide the forecast information that CLEC has made available to Malheur under this Agreement, provided that Malheur 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 Malheur provides such notice as the Commission directs to CLEC involved, in order to allow it to prosecute such procedures to their completion.

## **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 The Parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of, or relating to, this Agreement. Either Party may give written notice to the other Party of any dispute not resolved in the normal course of business. Each Party will within seven (7) Days after delivery of the written notice of dispute, designate a vice-president 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 will be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations will be treated as Confidential Information (Confidential Information) developed for purposes of settlement, and will be exempt from discovery and production, and not be admissible in any subsequent proceedings without the concurrence of both Parties.

5.18.2 If the designated representatives have not reached a resolution of the dispute within fifteen (15) Days after the written notice (or such longer period as agreed to in writing by the Parties), then either Party may commence a civil action or regulatory proceeding, as applicable. Unless the action falls within the exclusive jurisdiction of the Federal Communications Commission or the state Public Utilities Commission, any action will be brought in the United States District Court for the District of Colorado if it has subject matter jurisdiction over the action, and shall otherwise be brought in the Denver District Court for the State of Colorado. The Parties agree that such courts have personal jurisdiction over them.

5.18.3 Waiver of Jury Trial and Class Action. Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury and any right to pursue any claim or action arising out of or relating to this Agreement on a class or consolidated basis or in a representative capacity.

5.18.4 No cause of action, including disputes raised pursuant to Section 5.4.4, regardless of the form, arising out of or relating to this Agreement, may be brought by either Party more than two (2) years after the cause of action arises.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by Malheur and accepted by CLEC in accordance with applicable federal law and the state law of [STATE]. It shall be interpreted solely in accordance with applicable federal law and the state law of [STATE].

## **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 Malheur-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 activities undertaken by CLEC or equipment placement activities that result in the generation of 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. Malheur agrees to immediately notify CLEC if Malheur 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 Malheur and CLEC at the addresses shown below:

Malheur Home Telephone Company  
David Gabica  
225 SW 2<sup>nd</sup> St.  
Ontario, Oregon 97914  
Phone: 541-889-4402  
Fax: 541-889-2005

With copy to Qwest at the address shown below:

Qwest Law Department  
Associate General Counsel, Interconnection  
1801 California Street, 10th Floor  
Denver, CO 80202  
Email: [Legal.Interconnection@qwest.com](mailto:Legal.Interconnection@qwest.com)  
Phone: 303-383-6553

and with a copy to CLEC at the address shown below:

Mr. Michael Weidman  
President & CEO  
Lightspeed Networks Inc., dba LS Networks  
921 SW Washington St, Ste 370  
Portland, OR 97205  
(503) 414-0461 DID  
(503) 227-8585 Fax  
[mweidman@lsnetworks.net](mailto:mweidman@lsnetworks.net)

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 Intentionally Left Blank**

### **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, Malheur 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 Malheur 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) 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**

This Agreement (including the documents referred to herein and any amendments to the Agreement) 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.

## **Section 6.0 – RESALE**

### **6.1 Description**

6.1.1 Malheur shall offer for resale at wholesale rates any Telecommunications Services that it provides at retail to subscribers who are not Telecommunications Carriers, subject to the terms and conditions of this Section. All Malheur retail Telecommunications Services are available for resale from Malheur pursuant to the Act and will include terms and conditions (except prices) in Malheur's applicable product Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings. To the extent, however, that a conflict arises between the terms and conditions of the Tariff, catalog, price list, or other retail Telecommunications Services offering and this Agreement, this Agreement shall be controlling.

6.1.2 While this Section 6.0 of this Agreement addresses the provision of certain Malheur services to CLEC for resale by CLEC, the Parties also acknowledge that CLEC is required to provide its Telecommunications Services to Malheur for resale by Malheur. Upon request by Malheur, CLEC shall make its Telecommunications Services available to Malheur for resale pursuant to the applicable provisions of the Telecommunications Act of 1996, the FCC's relevant orders and rules, and the Commission's relevant orders and rules.

6.1.3 Certain Malheur services are not available for resale under this Agreement, as noted in Section 6.2. The applicable discounts for services available for resale are identified in Exhibit A.

### **6.2 Terms and Conditions**

6.2.1 Malheur shall offer introductory training on procedures that CLEC must use to access Malheur's OSS at no cost to CLEC. If CLEC asks Malheur personnel to travel to CLEC's location to deliver training, CLEC will pay Malheur's reasonable travel related expenses. Malheur may also offer to CLEC other training at reasonable costs.

6.2.2 Services available for resale under this Agreement may be resold only to the same class of End User Customers to which Malheur sells such services where such restrictions have been ordered or approved by the Commission. Such restrictions are listed below in this Section 6.2.2.

6.2.2.1 Promotional offerings of ninety (90) Days or less are available for resale. Such promotions are available for resale under the same terms and conditions that are available to Malheur retail End User Customers, with no wholesale discount. Should Malheur re-offer any promotion for a sequential ninety (90) Day or less promotion period following the initial ninety (90) Day or less promotion period, then the initial and subsequent promotion(s) will be available to CLEC for resale with any applicable wholesale discount.

6.2.2.2 Market trials of ninety (90) days or less are not available for resale.

6.2.2.3 Residential services and telephone assistance plans (TAP), including but not limited to Lifeline/Link-up and Tribal Lifeline services, are available for resale by CLEC only to the same class of End User Customers eligible to purchase these services from Malheur.

6.2.2.3.1 If CLEC is an Eligible Telecommunications Carrier (ETC) it must secure TAP credits directly from the appropriate federal or state agency(ies) as Malheur will not collect TAP credits on an ETC's behalf.

6.2.2.3.2 If CLEC is not an ETC and if CLEC wishes to resell TAP services, CLEC shall certify pursuant to 47 C.F.R. § 54.417 that it complies with all FCC and any applicable state requirements governing TAP programs. CLEC shall complete and provide such certification to Malheur before CLEC purchases TAP services for resale, and shall re-certify annually. The certification form and instructions are provided at Malheur's web site in the Resale General Product Catalog. Use of the Malheur certification form is mandatory to demonstrate compliance with the requirements of this Section.

6.2.2.4 Universal Emergency Number Service is not available for resale. Universal Emergency Number Service (E911/911 service) is provided with each local Exchange Service line resold by CLEC whenever E911/911 service would be provided on the same line if provided by Malheur to a Malheur retail End User Customer.

6.2.2.5 Inside wiring maintenance plans and installation are available for resale at the wholesale discount provided in Exhibit A. Other non-Telecommunications Services, such as calling cards and CPE, are not available for resale.

6.2.2.6 Voice messaging service is available for resale. Enhanced Services and information services, other than voice messaging, are not available for resale.

6.2.2.7 Malheur will make retail Contract Service Arrangements (CSA) available for resale at the wholesale discount rate specified in Exhibit A of this Agreement. All terms and conditions (except prices) in Malheur's applicable Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings will apply to resale of CSAs, including early termination liability. Nothing in this Agreement shall affect any obligation of any Malheur retail End User Customer that early terminates a CSA, including payment of any early termination charges.

6.2.2.8 Grandfathered services are available for resale by CLEC to existing End User Customers of the grandfathered product or service.

6.2.2.9 Centrex terms and conditions related to calculation of charges for, and Provisioning of common blocks, station lines and optional features will be based on the Centrex definition of a system and CLEC's serving location.

6.2.2.9.1 Where a common block is applicable, a Centrex system is defined by a single common block or multiple common blocks for a single CLEC within a single Central Office switching system. A common block defines the dialing plan for intercom calling, access to the Public Switched Network and/or private facilities, station line and system restrictions and feature access arrangements and functionality. CLEC may purchase multiple common blocks within a single Central Office switching system when CLEC requires different dialing plans, feature access arrangements and station line or system restrictions within a single system operation. CLEC with multiple common blocks within the same Central Office Switch may have network access register and private facility trunk groups aggregated across multiple common blocks. Centrex system based

optional features (i.e., Automatic Route Selection) may not be aggregated across multiple common blocks. A Centrex system must provide station lines to at least one (1) location and may provide station lines to multiple locations.

6.2.2.9.2 Centrex station lines are provisioned and charges are calculated based on serving CLEC's location. A location is defined as the site where Malheur facilities (cable plant from the serving Central Office Switch) meet CLEC facilities (inside wire). In a multi-tenant building, Malheur may bring facilities directly to a single Point of Interconnection with CLEC facilities, typically in a basement equipment room, which would be considered a single location for this multi-tenant building. Should Malheur bring service to multiple floors or offices within a multi-tenant building each floor or office with a separate CLEC facilities termination point is considered a location. Where CLEC has multiple buildings within contiguous property (campus), such buildings will be provisioned and billed as a single location. Contiguous property is defined as property owned or leased by CLEC and not separated by public thoroughfare, river or railroad rights-of-way. Property will be considered contiguous when connected via connecting passageways or conduit acceptable to Malheur for its facilities. Where CLEC has Centrex station lines from multiple Central Office switching systems, within the same Malheur Wire Center, and provisioned to the same location, CLEC will not be charged for service or provisioned as if service was originating from a single Centrex system. For example, station lines may only be aggregated from a single CLEC Centrex system to a single CLEC serving location for rating purposes. CLEC may not specify a Central Office as CLEC's location for the termination of Centrex station lines.

6.2.2.10 Private line service used for Special Access is available for resale but not at a discount.

6.2.2.11 Intentionally Left Blank.

6.2.2.12 Telecommunications Services provided directly to CLEC for its own use and not resold to End User Customers must be identified by CLEC as such, and CLEC will pay Malheur retail prices for such services.

6.2.3 Malheur shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that Malheur provides these services to itself, its subsidiaries, its Affiliates, other Resellers, and Malheur's retail End User Customers. Malheur shall also provide resold services to CLEC in accordance with the Commission's retail service quality requirements, if any. Malheur further agrees to reimburse CLEC for credits or fines and penalties assessed against CLEC as a result of Malheur's failure to provide service to CLEC, subject to the understanding that any payments made pursuant to this provision will be an offset and credit toward any other penalties voluntarily agreed to by Malheur as part of a performance assurance plan, and further subject to the following provisions:

6.2.3.1 Malheur shall provide service credits to CLEC for resold services in accordance with the Commission's retail service requirements that apply to Malheur retail services, if any. Such credits shall be limited in accordance with the following:

- a) Malheur's service credits to CLEC shall be subject to the wholesale discount;
- c) Intentionally Left Blank.
- d) Intentionally Left Blank.
- e) In no case shall Malheur's credits to CLEC exceed the amount Malheur would pay a Malheur End User Customer under the service quality requirements, less any wholesale discount applicable to CLEC's resold services; and
- f) Intentionally Left Blank.

6.2.3.2 Fines and Penalties - Malheur shall be liable to pay to CLEC fines and penalties for resold services in accordance with the Commission's retail service requirements that apply to Malheur retail services, if any. Such credits shall be limited in accordance with the following:

- a) Malheur's fines and penalties paid to CLEC shall be subject to the wholesale discount;
- b) Malheur shall only be liable to provide fines and penalties in accordance with the resold services provided to CLEC. Malheur is not required to pay fines and penalties for service failures that are the fault of CLEC;
- c) Intentionally Left Blank.
- d) Intentionally Left Blank.
- e) Intentionally Left Blank.

6.2.4 In the event that there are existing agreements between CLEC and Malheur for resale under Malheur retail Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings, CLEC may elect to continue to obtain services for resale under the existing agreements and such retail Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings, or CLEC may elect to terminate such existing agreements and obtain such services by adopting this Agreement pursuant to the General Terms of this Agreement. If CLEC so adopts this Agreement, the associated wholesale discount specified in Exhibit A of this Agreement will apply.

6.2.5 Intentionally Left Blank.

6.2.6 The Parties may not reserve blocks of telephone numbers except as allowed by Applicable Law or regulation.

6.2.7 Malheur will accept at no charge one (1) primary white pages Directory Listing for each main telephone number belonging to CLEC's End User Customer based on End User Customer information provided to Malheur by CLEC. Malheur will place CLEC's End User Customer's Listings in Malheur's Directory Assistance Database and will include such Listings in

Malheur's Directory Assistance Service. Additional terms and conditions with respect to Directory Listings are described in the Ancillary Services Section and the Malheur's Official Directory Publisher Section of this Agreement.

6.2.8 Malheur shall provide to CLEC, for CLEC's End User Customers, E911/911 call routing to the appropriate Public Safety Answering Point (PSAP). Malheur shall not be responsible for any failure of CLEC to provide accurate End User Customer information for listings in any databases in which Malheur is required to retain and/or maintain such information. Malheur shall provide CLEC's End User Customer information to the Automatic Location Identification/Database Management System (ALI/DMS). Malheur shall use its standard process to update and maintain CLEC's End User Customer service information in the ALI/DMS used to support E911/911 services on the same schedule that it uses for its retail End User Customers. Malheur assumes no liability for the accuracy of information provided by CLEC.

6.2.9 If Malheur provides and CLEC accepts Malheur's Directory Assistance Service or operator services for CLEC's resold local Exchange Service lines, such Directory Assistance and operator services may be provided with branding as provided in this Agreement in Sections 10.5 for Directory Assistance Service, and 10.7 for operator services.

6.2.10 CLEC shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its End User Customers for InterLATA and IntraLATA services. CLEC and Malheur shall follow all Applicable Laws, rules and regulations with respect to PIC changes. Malheur shall disclaim any liability for CLEC's improper InterLATA and IntraLATA PIC change requests, and CLEC shall disclaim any liability for Malheur's improper InterLATA (when applicable) and IntraLATA PIC change requests.

6.2.11 When End User Customers switch from Malheur to CLEC, or to CLEC from any other Reseller and if they do not change their service address to an address served by a different Rate Center, such End User Customers shall be permitted to retain their current telephone numbers if they so desire and if such number retention is not prohibited by Applicable Laws or regulations for number administration and Local Number Portability (LNP).

6.2.12 In the event Malheur properly terminates the Provisioning of any resold services to CLEC for any reason, CLEC shall be responsible for providing any and all necessary notice to its End User Customers of the termination. In no case shall Malheur be responsible for providing such notice to CLEC's End User Customers. Malheur will provide notice to CLEC of Malheur's termination of a resold service on a timely basis consistent with Commission rules and notice requirements.

6.2.13 The underlying network provider of a resold service shall be entitled to receive, from the purchaser of Switched Access, the appropriate access charges pursuant to its then effective Switched Access Tariff.

6.2.14 Resold services are available where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities. However, if CLEC requests that facilities be constructed or enhanced to provide resold services, Malheur will construct facilities to the extent necessary to satisfy its obligations to provide basic local Exchange Service as set forth in Malheur's retail Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings and Commission rules. Under such circumstances, Malheur will develop and provide to CLEC a price quotation for the construction.

Construction charges associated with resold services will be applied in the same manner that construction charges apply to Malheur retail End User Customers. If the quotation is accepted by CLEC, CLEC will be billed the quoted price and construction will commence after receipt of payment.

### **6.3 Rates and Charges**

6.3.1 Wholesale discounts for resold Telecommunications Services offerings are provided in Exhibit A. The Telecommunications Services offerings available for resale but excluded from the wholesale pricing arrangement in the Agreement are available at the retail Tariff, price list, catalog, or other retail Telecommunications Services offering rates. Telecommunications Services available for resale with or without a wholesale discount are subject to Commission-approved change, and any such changes shall apply from the effective date of such change on a going-forward basis only.

6.3.2 The Customer Transfer Charges (CTC) as specified in Exhibit A apply when transferring services to CLEC.

6.3.3 A Subscriber Line Charge (SLC), or any subsequent federally mandated charge to End User Customers, will continue to be paid by CLEC without discount for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC as found in the applicable Malheur Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings also apply.

6.3.4 CLEC will pay to Malheur the Primary Interexchange Carrier (PIC) change charge without discount for CLEC End User Customer changes of Interexchange or IntraLATA Carriers. Any change in CLEC's End User Customer's Interexchange or IntraLATA Carrier must be requested by CLEC on behalf of its End User Customer, and Malheur will not accept changes to CLEC's End User Customer's Interexchange or IntraLATA Carrier(s) from anyone other than CLEC.

6.3.5 CLEC agrees to pay Malheur when its End User Customer activates any services or features that are billed on a per use or per activation basis (e.g., continuous redial, last call return, call back calling, call trace) subject to the applicable discount in Exhibit A as such may be amended pursuant to this Section. With respect to all such charges, Malheur shall provide CLEC with sufficient information to enable CLEC to bill its End User Customers.

6.3.6 Miscellaneous Charges applicable to services ordered for resale by CLEC will apply if such Miscellaneous Charges apply for equivalent services ordered by Malheur retail End User Customers, except that CLEC will receive any applicable wholesale discount. Such Miscellaneous Charges include charges listed in the applicable Malheur Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings.

6.3.7 If the Commission orders additional services to be available for resale, Malheur will revise Exhibit A to incorporate the services added by such order into this Agreement, effective on the date ordered by the Commission. If the Commission indicates those additional services must be available for resale at wholesale discount rates, those additional services will be added to this Agreement at the original Agreement wholesale discount rate.

6.3.8 Malheur shall timely bill new or changed Commission-ordered resale rates or charges using the effective date for such rates or charges as ordered by the Commission. If

Malheur bills CLEC amounts different from new or changed rates or charges after the effective date of such rates or charges, Malheur shall make appropriate bill adjustments or provide appropriate bill credits on CLEC's bill(s).

6.3.9 If rates for services resold by CLEC under this Agreement change, based on changes in Malheur's Tariffs, catalogs, price lists or other retail Telecommunications Services offerings, charges billed to CLEC for such services will be based upon the new Tariff, catalogs, price lists, or other retail Telecommunications Services offerings rates less the applicable wholesale discount, if any, as agreed to herein or as established by Commission order. The new rate will be effective upon the effective date of the Tariff, catalog, price list, or other retail Telecommunications Services offerings.

6.3.10 Product-specific nonrecurring charges as set forth in Malheur's applicable Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings will apply when new or additional resold services are ordered and installed at CLEC's request for use by CLEC's End User Customers. Such nonrecurring charges will be subject to the wholesale discount, if any, that applies to the underlying service being added or changed.

## **6.4 Ordering Process**

6.4.1 CLEC, or CLEC's agent, shall act as 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's End User Customers contacting Malheur in error will be instructed to contact CLEC; and Malheur's End User Customers contacting CLEC in error will be instructed to contact Malheur. 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 Malheur or CLEC from discussing its products and services with CLEC's or Malheur's End User Customers who call the other Party seeking such information.

6.4.2 CLEC shall transmit to Malheur all information necessary for the ordering (Billing, Directory Listing and other information), installation, repair, maintenance and post-installation servicing according to Malheur's standard procedures, as described in the Malheur Product Catalog (PCAT) available on Malheur's public web site located at <http://www.qwest.com/wholesale/pcat>. Information shall be provided using Malheur's designated Local Service Request (LSR) format which may include the LSR, End User Customer and resale forms.

6.4.3 Malheur will use the same performance standards and criteria for installation, Provisioning, maintenance, and repair of services provided to CLEC for resale under this Agreement as Malheur provides to itself, its Affiliates, its subsidiaries, other Resellers, and Malheur retail End User Customers. The installation, Provisioning, maintenance, and repair processes for CLEC's resale service requests are detailed in the Access to OSS Section of this Agreement, and are applicable whether CLEC's resale service requests are submitted via Operational Support System or by facsimile.

6.4.4 CLEC is responsible for providing to Malheur complete and accurate End User Customer Directory Listing information including initial and updated information for Directory Assistance Service, white pages directories, and E911/911 Emergency Services. The Ancillary

Services Section of this Agreement contains complete terms and conditions for Directory Listings for Directory Assistance Services, white pages directories, and E911/911 Emergency Services.

6.4.5 If Malheur's retail End User Customer, or the End User Customer's New Service Provider orders the discontinuance of the End User Customer's existing Malheur service in anticipation of the End User Customer moving to a New Service Provider, Malheur will render its closing bill to the End User Customer, discontinuing Billing as of the date of the discontinuance of Malheur's service to the End User Customer. If the Current Service Provider, or if the End User Customer's New Service Provider orders the discontinuance of existing resold service from the Current Service Provider, Malheur will bill the Current Service Provider for service through the date the End User Customer receives resold service from the Current Service Provider. Malheur will notify CLEC by Operational Support System interface, facsimile, or by other agreed-upon processes when an End User Customer moves from the Current Service Provider to a New Service Provider. Malheur will not provide the Current Service Provider with the name of the New Service Provider selected by the End User Customer.

6.4.6 CLEC shall provide Malheur and Malheur shall provide CLEC with points of contact for order entry, problem resolution and repair of the resold services. These points of contact will be identified for both CLEC and Malheur in the event special attention is required on a service request.

6.4.7 Prior to placing orders on behalf of the End User Customer, CLEC shall be responsible for obtaining and having in its possession Proof of Authorization (POA), as set forth in the POA Section of this Agreement.

6.4.8 Due Date intervals for CLEC's resale service requests are established when service requests are received by Malheur through Operational Support Systems or by facsimile. Intervals provided to CLEC shall be equivalent to intervals provided by Malheur to itself, its Affiliates, its subsidiaries, other Resellers, and to Malheur's retail End User Customers.

## **6.5 Billing**

6.5.1 Malheur shall bill CLEC and CLEC shall be responsible for all applicable charges for the resold services as provided herein. CLEC shall also be responsible for all Tariffed, cataloged, price listed, and other retail Telecommunications Services offerings charges and charges separately identified in this Agreement associated with services that CLEC resells to an End User Customer under this Agreement.

6.5.2 Malheur shall provide CLEC, on a monthly basis, within seven (7) to ten (10) Days of the last day of the most recent Billing period, in an agreed upon standard electronic Billing format as detailed in Section 12.2.5, Billing information including (1) a summary bill, and (2) individual End User Customer sub-account information consistent with the samples available for CLEC review.

## **6.6 Maintenance and Repair**

6.6.1 Malheur will maintain its facilities and equipment used to provide CLEC resold services. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Malheur's facilities or equipment, including facilities or equipment that may terminate or be located at CLEC's End User Customer's premises, other than by connection or disconnection

to any interface between Malheur and the End User Customer's facilities, without the written consent of Malheur.

6.6.2 Maintenance and Repair procedures are detailed in Section 12. Access to telephone numbers and Dialing Parity are discussed in Sections 13 and 14 respectively.

6.6.3 CLEC and Malheur will employ the procedures for handling misdirected repair calls as specified in Section 12.3.8 of this Agreement.

## **6.7 Commingling of Resold Services with Unbundled Network Elements and Combinations of Unbundled Network Elements**

6.7.1 To the extent it is Technically Feasible and pursuant to the terms of Section 9.1, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements.

6.7.1.1 Services are available for Commingling only in the manner in which they are provided in Malheur's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

## **Section 7.0 - INTERCONNECTION**

### **7.1 Interconnection Facility Options**

7.1.1 This Section describes the Interconnection of Malheur's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), IntraLATA LEC Toll and Jointly Provided Switched Access traffic. Inter-carrier traffic exchange will be mutual and reciprocal and all traffic exchanged between the Parties must be provisioned pursuant to this Agreement. A Party that has interconnected or gained access under sections 251 (a) (1), 251 (c)(2), or 251 (c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering Telecommunications Services through the same arrangement(s) as well. Enhanced or information service providers (providers or "Information Services" as that term is defined in 47 U.S.C. § 153 (20)) that do not also provide domestic or international telecommunications are not Telecommunications Carriers as defined by the Act and thus may not interconnect under this Agreement. Malheur will provide Interconnection at any Technically Feasible point within its network, including but not limited to, (i) the Line Side of a local Switch (i.e., local switching); (ii) the Trunk Side of a local Switch, (iii) the trunk connection points for a Tandem Switch, (iv) Central Office Cross Connection points, (v) out-of-band Signaling Transfer Points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to Unbundled Network Elements. Section 9 of this Agreement describes Interconnection at points (i), (iv), (v), and (vi), although some aspects of these Interconnection points are described in Section 7. "Interconnection" is as described in the Act and refers, in this Section of the Agreement, to the connection between networks for the purpose of transmission and routing of Telephone Exchange Service traffic and IntraLATA LEC Toll traffic at points (ii) and (iii) described above. Interconnection, which Malheur currently names "Local Interconnection Service" (LIS), is provided for the purpose of connecting End Office Switches to End Office Switches or End Office Switches to local or Access Tandem Switches for the exchange of Exchange Service (EAS/Local traffic); or End Office Switches to Access Tandem Switches for the exchange of IntraLATA LEC Toll or Jointly Provided Switched Access traffic. Malheur Tandem Switch to CLEC Tandem Switch connections will be provided where Technically Feasible. New or continued Malheur local Tandem Switch to Malheur Access Tandem Switch and Malheur Access Tandem Switch to Malheur Access Tandem Switch connections are not required where Malheur can demonstrate that such connections present a risk of Switch exhaust and that Malheur does not make similar use of its network to transport the local calls of its own or any Affiliate's End User Customers.

7.1.1.1 Malheur will provide to CLEC Interconnection at least equal in quality to that provided to itself, to any subsidiary, Affiliate, or any other party to which it provides Interconnection. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Interconnection are subject to this requirement. Malheur will provide Interconnection under rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Malheur shall comply with all state wholesale and retail service quality requirements.

#### **7.1.2 Methods of Interconnection**

The Parties will negotiate the facilities arrangement used to interconnect their respective networks. CLEC shall establish at least one (1) physical Point of Interconnection in Malheur territory in each LATA CLEC has local End User Customers. CLEC represents and warrants that it is serving End User Customers physically located within each local calling area for which it wishes to exchange traffic within Malheur territory. The Parties shall establish, through

negotiations, at least one (1) of the following Interconnection arrangements, at any Technically Feasible point: (1) a DS1 or DS3 Malheur-provided facility; (2) Collocation; (3) negotiated Mid-Span Meet POI facilities; or (4) other Technically Feasible methods of Interconnection via the Bona Fide Request (BFR) process unless a particular arrangement has been previously provided to a third party, or is offered by Malheur as a product

7.1.2.1 Malheur-provided Facility. Interconnection may be accomplished through the provision of a DS1 or DS3 Entrance Facility of CLEC's determination. An Entrance Facility extends from the Malheur Serving Wire Center to CLEC's Switch location or any Technically Feasible POI chosen by CLEC. Malheur-provided Entrance Facilities may not extend beyond the area served by the Malheur Serving Wire Center. The rates for Malheur-provided Entrance Facilities are provided in Exhibit A. Malheur's private line transport service is available as an alternative to Malheur-provided Entrance Facilities, when CLEC uses such private line transport service for multiple services. Entrance Facilities may not be used for Interconnection with Unbundled Network Elements.

7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Malheur. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement.

7.1.2.2.1 Expanded Interconnection Channel Termination (EICT) provides the communication path that actually connects the physical space or in the case of virtual collocation, the designated equipment to Malheur's direct trunked transport and must be ordered to provision LIS to a collocation.

7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between the Malheur Serving Wire Center location and the location of the CLEC switch or other equipment located within the area served by the Malheur Serving Wire Center. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. CLEC may not use remaining capability in an existing Mid-Span Meet POI to gain access to Unbundled Network Elements. These Mid-Span Meet POIs will consist of facilities used for the exchange of traffic and joint provisioning of Telecommunications Services to End User Customers and other Telecommunications Carriers.

7.1.2.4 Intentionally Left Blank.

7.1.2.5 Malheur agrees to provide local Interconnection trunk diversity to the same extent it does so in Malheur's local network.

## **7.2 Exchange of Traffic**

### **7.2.1 Description**

7.2.1.1 This Section 7.2 addresses the exchange of traffic between CLEC's network and Malheur's network. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs or contractual offerings for such third party terminations. Unless otherwise agreed to by the Parties, via an amendment to this Agreement, the Parties will directly exchange traffic between their respective networks

without the use of third party transit providers.

7.2.1.2 The traffic types to be exchanged under this Agreement include:

7.2.1.2.1 EAS/local Exchange Service (EAS/Local) traffic as defined in this Agreement.

7.2.1.2.2 IntraLATA LEC Toll traffic as defined in this Agreement.

7.2.1.2.3 Jointly Provided Switched Access traffic as described in Section 7.5.1. Jointly Provided Switched Access is associated with Meet-Point Billing.

7.2.1.2.4 Transit traffic is any traffic that originates from one (1) Telecommunications Carrier's network and/or its end user(s), transits another Telecommunications Carrier's network, and terminates to yet another Telecommunications Carrier's network and/or its end user(s). For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access. Transit service is provided by Malheur, as a local and Access Tandem Switch provider, to CLEC to enable the completion of calls originated by or terminated to end users of another Telecommunications Carrier which is connected to Malheur's Switches. To the extent that CLEC's Switch functions as a local or Access Tandem Switch, as defined in this Agreement, CLEC may also provide transit service to Malheur.

7.2.1.2.5 Traffic having special Billing or trunking requirements includes, but is not limited to, the following:

- a) Directory Assistance;
- b) 911/E911;
- c) Operator Busy Line Verify/Busy Line Interrupt;
- d) Toll Free Services; and
- e) ISP-bound traffic.

7.2.1.3 Notwithstanding references to VNXX traffic in this Section 7, the Parties recognize that the Commission currently prohibits VNXX arrangements. As such, the Parties will not establish VNXX service architecture in Oregon or knowingly aid the other Party in providing VNXX service in Oregon. Should a Party reasonably determine (the "Determining Party"), based on information available to that Party, that the other Party is utilizing a VNXX architecture for exchange of traffic under this Agreement, the Determining Party will provide notice to the other Party. If the other Party does not provide information to show that it is not utilizing a VNXX architecture or is otherwise non-responsive to the Determining Party, the Determining Party may initiate Dispute Resolution pursuant to the terms of the Agreement. The Determining Party also will in all cases provide notice of its determination to the Commission.

## 7.2.2 Terms and Conditions

### 7.2.2.1 Transport and Termination of Exchange Service (EAS/Local) Traffic

7.2.2.1.1 Exchange Service (EAS/Local) traffic will be terminated as Local Interconnection Service (LIS).

7.2.2.1.2 As negotiated between the Parties, the transport of Exchange Service (EAS/Local) traffic may occur in several ways:

7.2.2.1.2.1 One-way or two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the ordering Party will provision its own one-way trunks. The Party ordering one-way trunks will choose the POI location for such one-way trunks.

7.2.2.1.2.2 CLEC may purchase transport services from Malheur or from a third party, including a third party that has leased the private line transport service facility from Malheur. Such transport provides a facility for the LIS trunk to be provisioned in order to deliver the originating Party's Exchange Service EAS/Local traffic to the terminating Party's End Office Switch or Tandem Switch for call termination. Transport may be purchased from Malheur as Tandem Switch routed (i.e., tandem switching, tandem transmission and direct trunked transport) or direct routed (i.e., direct trunked transport). This Section is not intended to alter either Party's obligation under Section 251(a) of the Act.

7.2.2.1.3 When either Party utilizes the other Party's Tandem Switch for the exchange of local traffic, where there is a DS1's worth of traffic (512 CCS) between the originating Party's End Office Switch delivered to the other Party's Tandem Switch for delivery to one (1) of the other Party's End Office Switches, the originating Party will order a direct trunk group to the other Party's End Office Switch. To the extent that CLEC has established a Collocation arrangement at a Malheur End Office Switch location, and has available capacity, CLEC may, at its sole option, provide two-way direct trunk facilities from that End Office Switch to CLEC's Switch.

7.2.2.1.4 LIS ordered to a Tandem Switch will be provided as direct trunked transport between the Serving Wire Center of CLEC's POI and the Tandem Switch. Tandem transmission rates, as specified in Exhibit A of this Agreement, will apply to the transport provided from the Tandem Switch to Malheur's End Office Switch.

7.2.2.1.5 If direct trunked transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties have not been able to resolve the issue through Mid-Span Meet arrangements, and the Parties cannot agree as to which Party will provide the facility, the Parties may bring the matter before the Commission for resolution on an Individual Case Basis.

7.2.2.1.6 Regardless of the number of Location Routing Numbers (LRNs) used by CLEC in a LATA, Malheur will route traffic destined for CLEC's End User Customers via direct trunking where direct trunking has been established. In the event that direct trunking has not been established, such traffic shall be routed via a Malheur Tandem Switch.

#### 7.2.2.2 IntraLATA LEC Toll Traffic

7.2.2.2.1 One-way or two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for delivery of IntraLATA LEC Toll traffic to be terminated on the other Party's network, the ordering Party will provision its own one-way trunks. The Party ordering one-way trunks will choose the POI location for such one-way trunks. IntraLATA LEC Toll traffic shall be delivered to Malheur at the Access Tandem Switch or via separate trunks to Malheur's End Office Switch(es), as designated by CLEC.

#### 7.2.2.3 Transit Traffic

7.2.2.3.1 Malheur will accept traffic originated by CLEC's network and/or its end user(s) for termination to other Telecommunications Carrier's network and/or its end users that is connected to Malheur's Switch. Malheur will also terminate traffic from these other Telecommunications Carriers' network and/or its end users to CLEC's network and/or its end users. For purposes of the Agreement, transit traffic does not include traffic carried by Interexchange Carriers. That traffic is defined as Jointly Provided Switched Access.

7.2.2.3.2 The Parties involved in transporting transit traffic will deliver calls to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP messages to facilitate full Interoperability and Billing functions.

7.2.2.3.3 The originating company is responsible for payment of appropriate rates to the transit company and to the terminating company. The Parties agree to enter into traffic exchange agreements with third party Telecommunications Carriers prior to delivering traffic to be transited to third party Telecommunications Carriers. In the event one Party originates traffic that transits the second Party's network to reach a third party Telecommunications Carrier with whom the originating Party does not have a traffic exchange agreement, then the originating Party will indemnify, defend and hold harmless the second Party against any and all charges levied by such third party Telecommunications Carrier, including any termination charges related to such traffic and any attorneys fees and expenses. In the case of IntraLATA LEC Toll traffic where Malheur is the designated IntraLATA Toll provider for existing LECs, Malheur will be responsible for payment of appropriate usage rates.

7.2.2.3.4 When Malheur receives an unqueried call from CLEC to a telephone number that has been ported to another local services provider, the transit rate will apply in addition to any query rates.

7.2.2.3.5 In the case of a transit call that terminates in the Local Calling Area but in a different state than the call originated, and the CLEC does not have an agreement with Malheur in the state where the transit call terminated, CLEC

must execute an agreement for that state if it is a state served by Malheur. In the absence of a second agreement, the transit rate in Exhibit A of this Agreement will be billed to the CLEC.

7.2.2.4 Jointly Provided Switched Access. The Parties will use industry standards developed and routing based on the LERG to handle the Provisioning and Billing of Jointly Provided Switched Access (MECAB, MECOD, and the Parties' FCC and state access Tariffs). Each Party will bill the IXC the appropriate portion of its Switched Access rates. Malheur will also provide the one-time notification to CLEC of the billing name, billing address and Carrier identification codes of the IXCs subtending any Access Tandem Switches to which CLEC directly connects. This type of traffic is discussed separately in this Section.

7.2.2.5 Interface Code Availability. Supervisory signaling specifications, and the applicable network channel interface codes for LIS trunks can be found in the Qwest Technical Publication for Local Interconnection Service 77398.

#### 7.2.2.6 Signaling Options

7.2.2.6.1 SS7 Out-of-Band Signaling. SS7 Out-of-Band Signaling must be requested on orders for LIS trunks. Common Channel Signaling Access Capability Service may be obtained under Malheur Intrastate and/or FCC Access Tariffs or from a third party signaling provider. Each of the Parties, Malheur and CLEC, will provide for Interconnection of their signaling network for the mutual exchange of signaling information in accordance with the industry standards as described in Telcordia documents, including but not limited to GR-905 CORE, GR-954 CORE, GR-394 CORE and Qwest Technical Publication 77342.

7.2.2.6.2 Clear Channel Capability. Clear Channel Capability (64CCC) permits 24 DS0-64 Kbps services or 1.536 Mbps of information on the 1.544 Mbps/s line rate. 64CCC is available for LIS trunks equipped with SS7 Out-of-Band Signaling. 64CCC must be requested on the order for new LIS trunks. Malheur will provide CLEC with a listing of Malheur Switches fully capable of routing 64CCC traffic through the Malheur web site: <http://www.qwest.com/disclosures>. Where available to Malheur, Malheur will provide CLEC with the same 64CCC on an alternate route or if necessary via an overlay network.

7.2.2.7 Measurement of terminating Local Interconnection Service (LIS) minutes begins when the terminating LIS entry Switch receives answer supervision from the called End User Customer's End Office Switch indicating the called End User Customer has answered. The measurement of terminating call usage over LIS trunks ends when the terminating LIS entry Switch receives disconnect supervision from either the called End User Customer's End Office Switch, indicating the called End User Customer has disconnected, or CLEC's Point of Interconnection, whichever is recognized first by the entry Switch. This is commonly referred to as "conversation time." The Parties will only charge for actual minutes of use and/or fractions thereof of completed calls. Minutes of use are aggregated at the end of the Billing cycle by End Office Switch and rounded to the nearest whole minute.

#### 7.2.2.8 LIS Forecasting

7.2.2.8.1 Both CLEC and Malheur shall work in good faith to define a mutually agreed upon forecast of LIS trunking.

7.2.2.8.2 Both Parties shall have the obligation to participate in semi-annual joint planning meetings to establish trunk design and Provisioning requirements. The Parties agree to provide mutual trunk forecast information to ensure End User Customer call completion between the Parties' networks. Such forecasts shall be for LIS trunking that impacts the Switch capacity and facilities of each Party. Malheur shall provide CLEC trunk group specific projections to CLEC on or before the date of the joint planning meeting.

7.2.2.8.3 Switch capacity growth requiring the addition of new switching modules may require six (6) months to order and install. To align with the timeframe needed to provide for the requested facilities, including engineering, ordering, installation and make ready activities, for capacity growth, Malheur will utilize CLEC's semi-annual forecasts and near-term demand submitted on Unforecast Demand Notification Forms to ensure availability of Switch capacity.

7.2.2.8.4 The forecast will identify trunking requirements for a two (2) year period.

7.2.2.8.5 Both Parties will follow the forecasting and Provisioning requirements of this Agreement for the appropriate sizing of trunks, and use of direct End Office Switch versus Tandem Switch routing. See Section 7.2.2.1.3.

7.2.2.8.6 Intentionally Left Blank

7.2.2.8.7 Joint planning meetings will be used to bring clarity to the process. Each Party will provide adequate information associated with the Malheur LIS Trunk Forecast Forms in addition to its forecasts. During the joint planning meetings, both Parties shall provide information on major network projects anticipated for the following year that may impact the other Party's forecast or Interconnection requirements. No later than two (2) weeks prior to the joint planning meetings, the Parties shall exchange information to facilitate the planning process. Malheur shall provide CLEC a report reflecting then current spare capacity at each Malheur Switch that may impact the Interconnection traffic. Malheur shall also provide a report reflecting then current blocking of local direct and alternate final trunk groups, Interconnection and non-Interconnection alike. CLEC will be provided Interconnection trunk group data on its own trunks. Malheur shall also provide a report reflecting Tandem Switch routed Interconnection trunking that has exceeded 512BHCCS. The information is Proprietary, provided under non-disclosure and is to be used solely for Interconnection network planning.

7.2.2.8.8 In addition to the above information, CLEC shall provide:

- a) Completed Malheur LIS Trunk Forecast Forms; and
- b) Any planned use of an alternate Tandem Switch provider.

7.2.2.8.9 In addition to the above information, the following information will be available through the Local Exchange Routing Guide or the Interconnections (ICONN) Database. The LERG is available through Telcordia. ICONN is available through the Qwest web site.

- a) Malheur Tandem Switches and Malheur End Office Switches (LERG);
- b) CLLI codes (LERG);
- c) Business/Residence line counts (ICONN);
- d) Switch type (LERG or ICONN); and
- e) Current and planned Switch generics (ICONN).

Malheur will notify CLEC six (6) months prior to LERG amendment, the anticipation of a new local Tandem Switch.

7.2.2.8.10 Malheur network disclosure of deployment information for specific technical capabilities (e.g., ISDN deployment, 64 CCC, etc.) shall be provided on Malheur's web site, <http://www.qwest.com/disclosures>.

7.2.2.8.11 When appropriate, Malheur will notify CLEC through the Malheur Trunk Group Servicing Request (TGSR) process of the need to take action and place orders in accordance with the forecasted trunk requirements. CLEC shall respond to the TGSR within ten (10) business days of receipt.

7.2.2.8.12 The following terms shall apply to the forecasting process:

7.2.2.8.12.1 CLEC forecasts may be provided to Malheur as detailed in Malheur's Trunk Forecast Form;

7.2.2.8.12.2 CLEC forecasts provided to Malheur, information provided by CLEC to Malheur outside of the normal forecasting process to modify the forecast, and forecasting information disclosed by Malheur to CLEC 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.

7.2.2.8.13 To the extent that CLEC's historical trunking underutilization is such that it inhibits Malheur from provisioning trunking to itself or other carriers without Malheur augmenting its switch for additional trunking capacity, Malheur reserves the right to reclaim the facilities for the purpose of providing capacity to itself or other carriers. Malheur shall not leave the CLEC-assigned trunk group with less than twenty five percent (25%) excess capacity. Ancillary trunk groups are excluded from this treatment.

7.2.2.8.14 Intentionally Left Blank.

7.2.2.8.15 Each Party shall provide a specified point of contact for

planning, forecasting and trunk servicing purposes.

7.2.2.8.16 Interconnection facilities provided on a route that involves extraordinary circumstances may be subject to the Construction Charges, as detailed in Section 19 of this Agreement. When Malheur claims extraordinary circumstances exist, it must apply to the Commission for approval of such charges by showing that CLEC alone is the sole cause of such construction. Malheur shall initiate such proceeding within ten (10) Days of notifying CLEC in writing that it will not construct the requested facilities, or within ten (10) Days of notice from CLEC in writing that Malheur must either commence construction of the facilities or initiate such proceeding with the Commission. In this proceeding, Malheur shall not object to using the most expeditious procedure available under state law, rule or regulation. Malheur shall be relieved of its obligation of constructing such facilities during the pendency of the proceeding before the Commission. If the Commission approves such charges, Malheur and CLEC will share costs in proportion to each Party's use of the overall capacity of the route involved. Malheur and CLEC may also choose to work in good faith to identify and locate alternative routes that can be used to accommodate CLEC forecasted build. Extraordinary circumstances include, but are not limited to, natural obstructions such as lakes, rivers, or steep terrain, and legal obstructions such as governmental, federal, Native American or private rights of way. The standard Malheur forecast period of six (6) months may not apply under these circumstances. Construction Charges shall not apply in the event that construction is an augment of an existing route.

#### 7.2.2.9 Trunking Requirements

7.2.2.9.1 The Parties will provide designed Interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with current industry standards, state requirements and standards provided for in the ROC and incorporated herein by reference.

7.2.2.9.1.1 Malheur shall provide monthly reports to CLEC on all Interconnection trunk groups and quarterly reports on all interoffice trunk groups carrying EAS/Local traffic between Malheur Tandem Switches and Malheur End Office Switches. The reports will contain busy hour traffic data, including but not limited to, overflow and the number of trunks in each trunk group.

7.2.2.9.2 Intentionally Left Blank.

7.2.2.9.3 Separate trunk groups may be established based on Billing, signaling, and network requirements. The following is the current list of traffic types that require separate trunk groups, unless specifically otherwise stated in this Agreement.

- a) Directory Assistance trunks (where the Switch type requires separation from operator services trunks);
- b) 911/E911 trunks;

- c) Operator services trunks (where the Switch type requires separation from Directory Assistance trunks);
- d) Mass calling trunks, if applicable.

7.2.2.9.3.1 Exchange Service (EAS/Local), ISP-Bound Traffic, IntraLATA LEC Toll, and Jointly Provided Switched Access may be combined in a single LIS trunk group at access tandems as appropriate per Section 7.2.2.9.6. Jointly Provided Switched Access may, upon request, be routed on a separate LIS trunk group with all other traffic combined on the other trunk group at access tandems as appropriate per Section 7.2.2.9.6.

7.2.2.9.3.2 CLEC may combine their originating Exchange Service (EAS/Local) traffic, terminating IntraLATA LEC Toll traffic and Switched Access FG D traffic on the same FG D trunk group.

7.2.2.9.3.2.1 CLEC will order a two-way LIS trunk group to Malheur's access tandems for the purpose of exchanging originating and terminating Jointly Provided Switched Access traffic.

7.2.2.9.3.2.2 Malheur will send Malheur originating Exchange Service (EAS/Local) traffic, IntraLATA LEC Toll traffic and transit traffic on LIS trunks.

7.2.2.9.3.2.3 When CLEC chooses this option, CLEC will send a letter to Malheur prior to ordering this service to alert Malheur of the CLEC's plan to order their service in this manner. This letter will indicate the CLEC's timeframe, FG D Provider and BANS and states involved in this option. Malheur will need up to two months lead time to ensure that the appropriate mechanized billing is set up.

7.2.2.9.4 Trunks will be ordered in increments of DS1 for exchange of EAS/Local, and IntraLATA Toll/Jointly Provided Switched Access traffic. Directory Assistance, 911/E911, operator Busy Line Interrupt and Busy Line Verify; and Toll Free Service trunks may be ordered in DS0.

7.2.2.9.5 The Parties will provide Common Channel Signaling (CCS) to one another in conjunction with all trunk circuits, except as provided below.

- a) The Parties will provision all trunking using SS7/CCS capabilities. Exceptions to this arrangement would be limited to operator services trunking, Directory Assistance trunking and 911 trunking. Malheur will not require a Bona Fide Request to accomplish Interconnection with a Malheur Central Office Switch not currently equipped for SS7 and where MF signaling is used. When the SS7/CCS option becomes available in the Malheur network for said trunking, the Parties will provision new trunks using SS7. In addition, the Parties will jointly work to convert existing trunking to SS7, as appropriate.
- b) When the Parties interconnect via CCS for Jointly Provided

Switched Access Service, the Tandem Switch provider will provide MF/CCS interworking as required for Interconnection with Interexchange Carriers who use MF signaling.

7.2.2.9.6 CLEC may interconnect at either the Malheur local Tandem Switch or the Malheur Access Tandem Switch for the delivery of local exchange traffic. When CLEC is interconnected at the Access Tandem Switch and where there would be a DS1's worth of local traffic (512 BHCCS) between CLEC's Switch and those Malheur End Office Switches subtending a Malheur local Tandem Switch, CLEC will order a trunk group to the Malheur local Tandem Switch. As an alternative, CLEC shall terminate traffic on Malheur End Office Switches. When Malheur lacks available capacity at the Access Tandem Switch, Malheur will arrange local Tandem Switch or End Office Switch Interconnection at the same cost to CLEC as Interconnection via the Malheur Access Tandem Switch.

7.2.2.9.6.1 Malheur will allow Interconnection for the exchange of local traffic at Malheur's Access Tandem Switch without requiring Interconnection at the local Tandem Switch, at least in those circumstances when traffic volumes do not justify direct connection to the local Tandem Switch; and regardless of whether capacity at the Access Tandem Switch is exhausted or forecasted to exhaust.

7.2.2.9.7 To the extent Malheur is using a specific End Office Switch to deliver limited Tandem Switch functionality to itself, a wireless service provider, another CLEC, or another ILEC, it will arrange the same trunking for CLEC.

7.2.2.9.8 Alternate Traffic Routing. If CLEC has a LIS arrangement which provides two (2) paths to a Malheur End Office Switch (one (1) route via a Tandem Switch and one (1) direct route), CLEC may elect to utilize alternate traffic routing. CLEC traffic will be offered first to the direct trunk group (also referred to as the "primary high" route) and then overflow to the Tandem Switch group (also referred to as the "alternate final" route) for completion to Malheur End Office Switches.

7.2.2.9.9 Host-Remote. When a Malheur Wire Center is served by a remote End Office Switch, CLEC may deliver traffic to the host Central Office or to the Tandem Switch.

#### 7.2.2.10 Testing

7.2.2.10.1 Acceptance Testing. At the time of installation of a LIS trunk group, and at no additional charge, acceptance tests will be performed to ensure that the service is operational and meets the applicable technical parameters.

#### 7.2.2.10.2 Testing Capabilities

7.2.2.10.2.1 LIS Acceptance Testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107

type), loop-around, short circuit, open circuit, and non-inverting digital loop-back (108 type), and such other acceptance testing that may be needed to ensure that the service is operational and meets the applicable technical parameters.

7.2.2.10.2.2 In addition to LIS acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing). Charges for such testing are identified in Section 7.3.5.

7.2.2.10.3 Repair Testing. At the time of repair of a LIS trunk group, at no additional charge, tests will be performed to ensure that the service is operational and meets the applicable technical parameters.

7.2.2.11 Mileage Measurement. Where required, the mileage measurement for LIS rate elements is determined in the same manner as the mileage measurement for V&H methodology as outlined in NECA Tariff No. 4.

## **7.3 Intercarrier Compensation**

### **7.3.1 Interconnection Facility Options**

The Intercarrier Compensation provisions of this Agreement shall apply to the exchange of Exchange Service (EAS/Local) traffic between CLEC's network and Malheur's network. Where either Party acts as an IntraLATA Toll provider, each Party shall bill the other the appropriate charges pursuant to its respective tariff or price lists. Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs, price lists or contractual offerings for such third party terminations. Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks without the use of third party transit providers.

#### **7.3.1.1 LIS Entrance Facilities**

7.3.1.1.1 Recurring and nonrecurring rates for LIS Entrance Facilities are specified in Exhibit A and will apply for those DS1 or DS3 facilities dedicated to use as LIS.

7.3.1.1.2 If CLEC chooses to provision LIS facilities over an existing facility purchased as private line transport service from the Malheur state or FCC access Tariffs, the rates from those Tariffs will apply.

##### **7.3.1.1.2.1 Intentionally Left Blank.**

7.3.1.1.3 If the Parties elect to establish LIS two-way trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way facilities shall be shared among the Parties by reducing the LIS two-way Entrance Facility (EF) rate element charges as follows:

7.3.1.1.3.1 The provider of the LIS two-way Entrance Facility (EF) will initially share the cost of the LIS two-way EF by assuming an initial relative use factor (RUF) of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center different from the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Malheur Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor, that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. ISP-bound traffic or traffic delivered to Enhanced Service providers is interstate in nature. Malheur has never agreed to exchange VNXX traffic with CLEC.

7.3.1.2 Collocation

7.3.1.2.1 See Section 8.

**7.3.2 Direct Trunked Transport**

7.3.2.1 Either Party may elect to purchase direct trunked transport from the other Party.

7.3.2.1.1 Direct trunked transport (DTT) is available between the Serving Wire Center of the POI and the terminating Party's Tandem Switch or End Office Switches. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.

7.3.2.1.2 When DTT is provided to a local or Access Tandem Switch for Exchange Service (EAS/Local) traffic, or to an Access Tandem Switch for IntraLATA LEC Toll, or Jointly Provided Switched Access traffic, the applicable DTT rate elements apply between the Serving Wire Center and the Tandem Switch. Additional rate elements for delivery of traffic to the terminating End Office Switch are tandem switching and tandem transmission. These rates are described below.

7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/Access Tandem Switch or End Office Switch.

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one (1) quarter if the Parties have not exchanged LIS traffic previously. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one (1) quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-ISP-bound traffic to substantiate a change in that factor. If CLEC's End User Customers are assigned NPA-NXXs associated with a rate center other than the rate center where the End User Customers are physically located, traffic that does not originate and terminate within the same Malheur Local Calling Area, regardless of the called and calling NPA-NXXs involving those End User Customers, is referred to as "VNXX traffic." For purposes of determining the relative use factor, the terminating carrier is responsible for ISP-bound traffic and for VNXX traffic. If either Party demonstrates with traffic data that actual minutes of use during the previous quarter justifies a new relative use factor, that Party will send a notice to the other Party. The new factor will be calculated based upon Exhibit H. Once the Parties finalize a new factor, bill reductions and payments will apply going forward from the date the original notice was sent. ISP-bound traffic is interstate in nature. Malheur has never agreed to exchange VNXX traffic with CLEC.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

### **7.3.3 Trunk Nonrecurring charges**

7.3.3.1 Installation nonrecurring charges may be assessed by the provider for each LIS trunk ordered. Malheur rates are specified in Exhibit A.

7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.

### **7.3.4 Exchange Service (EAS/Local) Traffic**

7.3.4.1 End Office Switch Call Termination

7.3.4.1.1 The per-minute-of-use call termination rates as described in Exhibit A of this Agreement will apply reciprocally for Exchange Service (EAS/Local) traffic terminated at a Malheur or CLEC End Office Switch.

7.3.4.1.2 For purposes of call termination, CLEC Switch(es) shall be treated as End Office Switch(es) unless CLEC's Switch(es) meet the definition of a Tandem Switch in this Agreement in the Definitions Section.

7.3.4.1.3 Intentionally Left Blank.

7.3.4.1.4 Neither Party shall be responsible to the other for call termination charges associated with third party traffic that transits such Party's network.

#### 7.3.4.2 Tandem Switched Transport

7.3.4.2.1 For traffic delivered through a Malheur or CLEC Tandem Switch (as defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the End Office Switch call termination rate described above.

7.3.4.2.2 Mileage shall be measured for the tandem transmission rate elements based on V&H coordinates between the Tandem Switch and terminating End Office Switch.

7.3.4.2.3 When a Party terminates traffic to a remote Switch, tandem transmission rates will be applied for the V&H mileage between the host Switch and the remote Switch when the identity of each is filed in the NECA 4 Tariff.

7.3.4.2.4 When Malheur receives an unqueried call from CLEC to a number that has been ported to another Switch within the EAS/Local Calling Area, and Malheur performs the query, mileage sensitive tandem transmission rates will apply which reflect the distance to the End Office Switch to which the call has been ported.

7.3.4.2.4.1 To determine the responsible originating Carrier of unqueried calls for purposes of identification of the Carrier to bill LNP query charges, Malheur and CLEC are required to utilize the Number Portability Administration Center (NPAC) database, or another database that is supported by OBF.

#### 7.3.4.3 Intentionally Left Blank.

7.3.4.4 CLEC may choose one (1) of the following two (2) options for the exchange of traffic subject to Section 251(b)(5) of the Act ("Section 251(b)(5) Traffic") (see Exhibit J):

7.3.4.4.1 The rates applicable to Section 251(b)(5) Traffic between Malheur and CLEC shall be the same as the rates established for ISP-bound traffic pursuant to Section 7.3.6. Such rate for ISP-bound traffic will apply to Section 251(b)(5) Traffic in lieu of End Office Switch Call Termination rates, and Tandem Switched Transport rates.

7.3.4.4.2 The compensation rate for Section 251(b)(5) Traffic shall be as established by the Commission. The Parties shall cooperate in establishing a

process by which Section 251(b)(5) Traffic and ISP-bound traffic will be identified in order to compensate one another at the appropriate rates and in a prompt manner (see Section 7.3.6).

7.3.4.5 The Parties will not pay terminating compensation on traffic, including ISP-bound traffic, when the traffic does not originate and terminate within the same Malheur Local Calling Area, regardless of the calling and called NPA-NXXs and, specifically, regardless whether an End User Customer is assigned an NPA-NXX associated with a rate center that is different from the rate center where the End User Customer is physically located (also known as "VNXX traffic"). Malheur's agreement to the terms in this paragraph is without waiver or prejudice to Malheur's position is that it has never agreed to exchange VNXX traffic with CLEC.

### **7.3.5 Miscellaneous Charges**

Miscellaneous Charges apply for the following miscellaneous services when provided with LIS trunks. Exhibit A includes a reference to the Tariff, catalog, price list, or other similar document that provides the amount of each Miscellaneous Charge.

7.3.5.1 Cancellation charges apply to cancelled LIS trunk orders based upon critical dates, terms and conditions in accordance with the Access Service Tariff Section 5.2.3 and trunk nonrecurring charges referenced in this Agreement.

7.3.5.2 Expedite requests for LIS trunk orders are available. Expedites are requests for intervals that are shorter than the interval defined in Malheur's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates. Expedite charges apply per order for every day that the Due Date interval is shortened, based on the standard interval in the SIG or based on ICB criteria for Due Dates.

7.3.5.2.1 CLEC will request an expedite for LIS trunks, including an expedited Due Date, on the Access Service Request (ASR).

7.3.5.2.2 The request for expedite will be approved only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Malheur's Product Catalog at Malheur's wholesale web site.

7.3.5.3 Additional testing, including cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing, is available for LIS trunks.

### **7.3.6 ISP-Bound Traffic**

7.3.6.1 Subject to the terms of this Section, terminating compensation for ISP-bound traffic exchanged between Malheur and CLEC will be billed pursuant to rates in Exhibit A, without limitation as to the number of minutes of use (MOU) or whether the MOU are generated in "new markets" as that term has been defined by the FCC so long as the ISP for which the call is bound is physically located in the same local calling area as the End User Customer originating the call.

7.3.6.2 Identification of ISP-Bound Traffic – Malheur will presume traffic delivered to CLEC that exceeds a 3:1 ratio of terminating (Malheur to CLEC) to originating (CLEC

to Malheur) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the Commission. Traffic exchanged that is not ISP-bound traffic will be considered to be Section 251(b)(5) traffic. The provisions in this Section apply regardless how the ISP-bound traffic is determined.

7.3.6.2.1 Intentionally Left Blank.

7.3.6.2.2 Intentionally Left Blank.

7.3.6.2.3 Intentionally Left Blank.

7.3.6.3 Intentionally Left Blank.

7.3.6.4 The CLEC is responsible for payment of one-way facilities and/or trunking provisioned solely for Malheur-originated ISP-bound traffic.

### **7.3.7 Transit Traffic**

The following rates will apply:

7.3.7.1 Local Transit: A per-minute-of-use rate will be charged to the originating Party, as contained in Exhibit A.

7.3.7.2 IntraLATA Toll Transit: A per-minute-of-use rate will be charged to the originating Party, as contained in Exhibit A.

7.3.7.3 Jointly Provided Switched Access: The applicable Switched Access rates will be billed by the Parties to the IXC based on MECAB guidelines and each Party's respective FCC and state access Tariffs.

7.3.8 Signaling Parameters: Malheur and CLEC are required to provide each other the proper signaling information (e.g., originating Calling Party Number (CPN), Charge Number (ChN) and destination called party number, etc.) per 47 C.F.R. § 64.1601 to enable each Party to issue bills in a complete and timely fashion. All CCS signaling parameters will be provided including CPN, calling party category, ChN and Originating Line Information Parameter (OLIP) on calls destined for Interexchange Carriers (IXCs). All privacy indicators will be honored. Where SS7 connections exist, each Party shall pass all CCS signaling parameters, where available, on each EAS/Local and IntraLATA toll call carried over Interconnection trunks. All EAS/Local and IntraLATA Toll calls exchanged without ChN and/or CPN information will be billed as either EAS/Local Traffic or IntraLATA Toll Traffic in direct proportion to the minutes of use (MOU) of calls exchanged with ChN and/or CPN information for the preceding quarter when the calls traverse a Switched Access Feature Group D trunk group. If either Party fails to provide ChN and/or CPN (valid originating information), and cannot substantiate technical restrictions (i.e., MF signaling) such traffic will be billed as Intrastate Switched Access when the calls traverse an interconnection trunk. Traffic sent to the other Party on its interconnection trunks without ChN and/or CPN (valid originating information) will be handled in the following manner. The transit provider will be responsible for only its portion of this traffic, which will not exceed more than five percent (5%) of the total Exchange Service (EAS/Local) and IntraLATA LEC Toll traffic delivered to the other Party. The Switch owner will provide to the other Party, upon request, information to demonstrate that Party's portion of no-CPN/ChN traffic does not

exceed five percent (5%) of the total traffic delivered. The Parties will coordinate and exchange data as necessary to determine the cause of the CPN/ChN failure and to assist its correction.

## 7.4 Ordering

7.4.1 When ordering LIS, the ordering Party shall specify requirements on the Access Service Request (ASR): 1) the type and number of Interconnection facilities to terminate at the Point of Interconnection in the Serving Wire Center; 2) the type of interoffice transport, (i.e., direct trunked transport or tandem switched transport); 3) the number of Ports to be provisioned at an End Office Switch or local Tandem Switch; and 4) any optional features. When the ordering Party requests facilities, routing, or optional features different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans.

7.4.2 For each NXX Code assigned to CLEC by the NANPA, CLEC will provide Malheur with the CLLI codes of the Malheur Tandem Switches and CLEC's Point of Interface to which traffic associated with the NXX will be routed. For NXX Codes assigned to existing LIS trunk groups, CLEC will also provide Malheur with the Malheur assigned two-six code (TGSN) to which each NXX will be routed. Information that is not currently available in the LERG may be provided via the NPA NXX Code Request Routing Form available on the Malheur web site:

[http://www.qwest.com/wholesale/notices/npa\\_nxxProcess.html](http://www.qwest.com/wholesale/notices/npa_nxxProcess.html).

Either Party shall respond to a special request for a NPA NXX Code Request Routing Form when a single Switch is served by multiple trunk groups.

7.4.3 When either Party has ordered a DS3 Entrance Facility or private line facility, that Party will order the appropriate DS1 facility required and identify the channels of the DS3 to be used to provide circuit facility assignments (CFA). Also, if either Party has provided or ordered a DS1 Entrance Facility or private line facility, that Party will be responsible for identification of the DS0 channels of the DS1 private line to be used to provide CFA.

7.4.4 A joint planning meeting will precede initial trunking orders. These meetings will result in agreement and commitment that both Parties can implement the proposed plan and the transmittal of Access Service Requests (ASRs) to initiate order activity. The Parties will provide their best estimate of the traffic distribution to each End Office Switch subtending the Tandem Switch.

7.4.5 If CLEC uses a method of interconnection of one POI in the LATA or the access tandem for local traffic in accordance with Section 7.1.2 and/or 7.2.2.9.6, Malheur and CLEC will work together to review CLEC's network configuration in order to ensure correct and complete ASR ordering.

7.4.6 Service intervals and Due Dates for initial establishment of trunking arrangements at each new Switch location of Interconnection between the Parties will be determined on an Individual Case Basis.

7.4.7 Malheur will establish intervals for the provision of LIS trunks that conform to the performance objectives set forth in Section 20. Malheur will provide notice to CLEC of any changes to the LIS trunk intervals consistent with the Change Management Process (CMP)

applicable to the PCAT. Operational processes within Malheur work centers are discussed as part of the CMP. Malheur agrees that CLEC shall not be held to the requirements of the PCAT.

7.4.8 The ordering Party may cancel an order at any time prior to notification that service is available. If the ordering Party is unable to accept service within thirty (30) Days after the Service Date, the provider has the following options:

- a) The order will be canceled; cancellation charges as noted in 7.3.5.1 apply unless mutually agreed to by the Parties;
- b) Intentionally Left Blank.
- c) Billing for the service will commence.

In such instances, the cancellation date or the date Billing is to commence, depending on which option is selected, will be the 31<sup>st</sup> Day beyond the Service Date.

## **7.5 Jointly Provided Switched Access Services**

7.5.1 Jointly Provided Switched Access Service is described and governed by the FCC and state access Tariffs, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD) Guidelines and based on LERG routing, and is not modified by any provisions of this Agreement. Both Parties agree to comply with such guidelines. Malheur and CLEC agree that the originating, intermediate, and terminating LECs for switched access will cooperatively determine the Jointly Provided Switched Access arrangements that all parties concur in.

7.5.2 Malheur will agree to function as the Access Service Coordinator (ASC) as defined in the Multiple Exchange Carrier Ordering and Design Guidelines (MECOD) (Technical Reference SR-TAP-000984). Malheur will provide the operational, technical and administrative support required in the planning, Provisioning and maintenance involved in the joint access Provisioning process to the IXCs. Malheur will be unable to fulfill the role of ASC if CLEC does not fully comply with MECOD requirements, including filing CLEC's End Office Switches and billed percentages (BPs) in the NECA 4 Tariff.

7.5.3 Malheur and CLEC will each render a separate bill to the IXC, using the multiple bill, multiple tariff option.

7.5.4 A charge will apply for Category 11-01-XX Access Services records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the Interexchange Carrier for Jointly Provided Switched Access Services and 8XX database queries. The charge for each Billable Record created and transmitted is listed in Exhibit A of this Agreement.

## **7.6 Transit Records**

7.6.1 Malheur and CLEC will exchange wireline network usage data originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC Switch, transits Malheur's network, and terminates to CLEC's network when Technically Feasible and commercially reasonable. Each Party agrees to provide to the other this wireline network usage data when Malheur or CLEC acts as a transit provider currently or in the future. The Parties

understand that this information is Carrier protected information under Section 222 of the Telecommunications Act and shall be used solely for the purposes of Billing the wireline LEC. CLEC will provide to Malheur information to enable Malheur to provide transit records on a mechanized basis when Technically Feasible. This includes, but is not limited to: service center information, operating company number, and state jurisdiction. Malheur and CLEC agree to exchange wireline network usage data as Category 11-01-XX.

7.6.2 Malheur and CLEC will exchange wireless network usage data originated by a Wireless Service Provider (WSP) where the NXX resides in a WSP Switch, transits Malheur's network, and terminates to CLEC's network when Technically Feasible and commercially reasonable. Each Party agrees to provide to the other this wireless network usage data when Malheur or CLEC acts as a transit provider currently or in the future. The Parties understand that this information is Carrier protected information under Section 222 of the Telecommunications Act and shall be used solely for the purposes of Billing the WSP. CLEC will provide to Malheur information to be able to provide transit records on a mechanized basis when Technically Feasible. This includes, but is not limited to: service center information, operating company number and state jurisdiction. Malheur and CLEC agree to exchange wireless network usage data as Category 11-01-XX.

7.6.3 CLEC may order transit records from Malheur and a charge will apply for Category 11-01-XX transit records sent in an EMR mechanized format. These records are used to provide information necessary for each Party to bill the originating Carrier for transit when Technically Feasible. The charge for each Billable Record created and transmitted is listed in Exhibit A of this Agreement.

## **7.7 Local Interconnection Data Exchange for Billing**

7.7.1 There are certain types of calls or types of Interconnection that require exchange of Billing records between the Parties, including, for example, alternate billed and Toll Free Service calls. The Parties agree that all call types must be routed between the networks, accounted for, and settled among the Parties. Certain calls will be handled via the Parties' respective operator service platforms. The Parties agree to utilize, where possible and appropriate, existing accounting and settlement systems to bill, exchange records and settle revenue.

7.7.2 The exchange of Billing records for alternate billed calls (e.g., calling card, bill-to-third-number and collect) will be distributed through the existing CMDS processes, unless otherwise separately agreed to by the Parties.

7.7.3 Inter-Company Settlements (ICS) revenues will be settled through the Calling Card and Third Number Settlement System (CATS). Each Party will provide for its own arrangements for participation in the CATS processes, through direct participation or a hosting arrangement with a direct participant.

7.7.4 Non-ICS revenue is defined as IntraLATA collect calls, calling card calls, and billed to third number calls which originate on one (1) service provider's network and are billed by another service provider located within the same Malheur geographic specific region. The Parties agree to negotiate and execute an agreement for settlement of non-ICS revenue. This separate arrangement is necessary since existing CATS processes do not permit the use of CATS for non-ICS revenue. The Parties agree that current message distribution processes,

including the CMDS system or Malheur in-region facilities, can be used to transport the call records for this traffic.

7.7.5 Both Parties will provide the appropriate call records to the IntraLATA Toll Free Service provider, thus permitting the service provider to bill its End User Customers for the inbound Toll Free Service. No adjustments to bills via tapes, disks or Network Data Mover (NDM) will be made without the mutual agreement of the Parties.

## Section 8.0 - COLLOCATION

### 8.1 Description

8.1.1 Collocation allows for the placing of equipment by CLEC at Malheur's Premises, where Technically Feasible, that is necessary for accessing Unbundled Network Elements (UNEs), ancillary services or Interconnection. Collocation includes the leasing to CLEC of physical space in Malheur 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 Malheur'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 four (4) standard types of Collocation available pursuant to this Agreement – Virtual, Cageless Physical, Interconnection Distribution Frame, and Common Area Splitter. Other types of Collocation may be requested through the BFR process.

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

8.1.1.2 Intentionally Left Blank

8.1.1.3 Cageless Physical Collocation -- is a non-caged area within a Malheur Premises. In Wire Centers, space will be made available in single frame bay increments. In Wire Centers, the current minimum square footage is nine (9) square feet per bay, however, if smaller bays are or become available, Malheur 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.

8.1.1.4 Intentionally Left Blank

8.1.1.5 Interconnection Distribution Frame (ICDF) Collocation -- is offered for the purpose of facilitating CLEC's combining of Unbundled Network Elements, Finished Services, including Local Interconnection Trunks, and ancillary services. Under ICDF Collocation, CLEC need not collocate equipment in the Malheur Wire Center. With ICDF Collocation, CLEC will have access to the Malheur Wire Center and an ICDF to combine UNEs, Finished Services, 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 Malheur Wire Center through Cageless Physical Collocation.

8.1.1.6 Intentionally Left Blank

8.1.1.7 Common Area Splitter Collocation – Allows CLEC to place Splitters in a common space area outside its Collocation space near CLEC's DS0 termination points. Qwest will install Splitter shelves for shared use by CLECs.

## **8.2 Terms and Conditions**

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

8.2.1.1 Malheur shall provide Collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory. In addition, Malheur 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, Malheur will not combine or Commingle services or Network Elements that are offered by Malheur pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

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

8.2.1.1.1.2 Entrance Facilities and mid-span meet SPOI obtained pursuant to Section 7 of this Agreement are not 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 also meets this legal standard when used for Interconnection or access to Unbundled Network Elements for purposes of providing Advanced Services such as xDSL. 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 Malheur 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, Malheur will allow future Collocations of similar equipment without requesting a written justification unless and until Malheur can establish to the state Commission that such equipment is not intended for Interconnection or access to Unbundled Network Elements. However, Malheur 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 Malheur 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 Malheur 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 Malheur. To the extent CLEC selects a Demarcation Point outside of its collocated space, CLEC shall provide and Malheur shall install the tie cables from CLEC's collocated equipment to the Demarcation Point. Alternatively, Malheur shall provide and install these tie cables, at CLEC's expense.

8.2.1.5 Malheur 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; or
- 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 Malheur'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 Cageless Physical Collocation and Virtual Collocation, CLEC must lease space for the placement of CLEC's equipment within Malheur's Premises. Malheur will provide the structure that is necessary in support of Collocation including

physical space, 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. Malheur shall provide standard Premises alarming pursuant to Qwest Technical Publication 77385. Malheur shall not impose safety or engineering requirements on CLEC that are more stringent than the safety or engineering requirements Malheur imposes on its own equipment located on its Premises.

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

- a) available Collocation space in a particular Malheur Premises;
- b) number of collocators;
- c) any modifications in the use of the space since the last report;
- d) measures that Malheur 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 Malheur and its Affiliates and reservations of space by all CLECs.

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 End User Customer addresses served by each Remote Premises are available to CLEC 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 Malheur web site located at <http://www.qwest.com/iconn>.) If CLEC is unable to determine the information it seeks regarding the Remote Premises after using such database tools, Malheur 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. Malheur 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 Malheur'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 the legitimate lack of sufficient space in a Malheur Premises for placement of CLEC's equipment. Alternatively, CLEC will be offered Virtual Collocation as an alternative to Cageless 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, Malheur will determine the feasibility of the next preferred option in the event CLEC's first choice is not available. To the extent possible, Malheur shall make contiguous space available to CLEC when it seeks to expand its existing Collocation space. Where adjoining space is not available, Malheur 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, Malheur shall take into account projected demand for Collocation of equipment.

8.2.1.10.1 Space Denial Queue – Malheur will maintain a list of denied Collocation requests, in order of the date of receipt (Space Denial Queue), for each Premises where Malheur 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, Malheur will inform CLECs in the queue that space for Collocation has become available. If there is insufficient space to accommodate all of the CLECs in queue, Malheur shall notify CLECs of the availability of space in accordance with the CLEC's position in the queue. CLEC must respond within ten (10) Days of receipt of notification from Malheur with a new Collocation Application. If CLEC does not provide a Collocation Application within ten (10) 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 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 Malheur denies a request for Collocation in a Malheur Premises due to space limitations, Malheur shall allow CLEC representatives to tour the entire Premises escorted by Malheur personnel within ten (10) Days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Malheur will review the detailed floor plans for the Premises with CLEC during the tour, including Malheur reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Malheur and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Malheur and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Malheur has incorrectly identified the space limitations, Malheur will honor the original Collocation Application date for determining RFS unless both Parties agree to a revised date.

8.2.1.12 Malheur 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 Malheur claims that Physical Collocation is not practical because of space limitations.

8.2.1.13 Malheur will maintain a publicly available document, posted for viewing on the Internet, ([www.qwest.com/wholesale/notices/collo/spaceAvail.html](http://www.qwest.com/wholesale/notices/collo/spaceAvail.html)), indicating all Premises that are full, and will update this document within ten (10) Days of the date at which a Premises runs out of physical space and will update the document within ten (10) Days of the date that space becomes available. In addition, the publicly available document shall include, based on information Malheur 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 Malheur 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 Space Availability Report requested by any CLEC.

#### 8.2.1.14 Reclamation and Reconditioning of Space

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

8.2.1.14.1.1 If CLEC issues a forecast or reservation for Collocation, Malheur shall use its best judgment 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, Malheur 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, Malheur will assess the cost of such reconditioning, provide a quotation to CLEC for the costs, and upon Acceptance of quotation 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 Cancellation of Collocation Request. CLEC may cancel a Collocation request prior to the completion of the request by Malheur by submitting a Collocation Cancellation Application. CLEC shall be responsible for payment of all costs incurred by Malheur up to the point when the cancellation is received. Collocation Cancellation is available for all Collocations under a particular billing authorization number (BAN) for which CLEC has not received notification of completion from Malheur. Cancellation is offered for all types of Collocation. A cancellation will only occur upon request by CLEC.

8.2.1.15.1 CLEC may submit a Collocation Cancellation Application if the Collocation job is in progress. Upon receipt of a completion notice for the specific Collocation job, the Collocation can no longer be cancelled. Malheur will provide acknowledgment of acceptance or rejection of the Collocation Cancellation Application within one (1) business day of receipt. Malheur will stop work on a Collocation in progress upon receipt and acceptance of a Collocation Cancellation Application. A request for cancellation is irrevocable once Malheur has accepted the Collocation Cancellation Application.

8.2.1.15.2 In the event there is a Common Area Splitter Collocation or CLEC has requested a direct CLEC-to-CLEC connection arrangement with the same BAN as the Collocation job to be canceled, the associated Common Area Splitter Collocation and direct CLEC-to-CLEC connection will also be cancelled.

8.2.1.15.3 Malheur will not charge for canceling the Collocation job except for work already completed as of acceptance by Malheur of the Collocation Cancellation Application. Charges will be based on when Malheur receives the Collocation Cancellation Application and the completion status of the Collocation work. A quotation will be issued within thirty (30) Days of Malheur's acceptance of the Collocation Cancellation Application.

8.2.1.15.4 Additional Labor – Other. This charge is for additional labor not included in the quotation described in 8.2.1.15. This additional labor may include testing and labor activities completed to accommodate a specific customer request.

8.2.1.16 Malheur may retain a limited amount of floor space for its own specific future uses, provided, however, that neither Malheur 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. Malheur shall relinquish any space held for future use before denying a request for Virtual Collocation on the grounds of space limitations, unless Malheur 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 Malheur installations and structures meet earthquake rating requirements as contained in the Network Equipment Building System (NEBS) - BR GR-63-CORE document. A list of Malheur Premises and the applicable related earthquake ratings is available for review on the Malheur [web site at: http://www.qwest.com/wholesale/pcat/collocation.html](http://www.qwest.com/wholesale/pcat/collocation.html).

8.2.1.18 Malheur will review the security requirements, issue keys, ID cards and

explain the access control processes to CLEC. 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 and approved areas or if they provide access to unauthorized individuals. Likewise, Malheur personnel are subject to trespass violations if they wrongfully provide access to unauthorized individuals.

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

8.2.1.19 Malheur shall provide access to CLEC's collocated equipment and 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 employee's entry into Malheur Premises. Malheur 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 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 and Cageless Physical Collocation or ICDF Collocation) in a single Premises, provided space is available.

8.2.1.22 Termination of Collocation Arrangement. CLEC may terminate a completed Collocation arrangement by a Collocation Decommission or a Collocation Transfer of Responsibility. A Collocation site is only eligible for Collocation Decommission or a Collocation Transfer of Responsibility after the site is built-out and accepted by CLEC. Abandoned equipment shall be handled as detailed in Section 8.2.1.22.3.

8.2.1.22.1 Collocation Decommission. Collocation Decommission refers to the deactivation of a Collocation site occupied by CLEC and removal of CLEC equipment. Collocation Decommission is offered for all types of Collocation. A request for decommissioning is irrevocable once Malheur accepts the Collocation Decommission Application.

8.2.1.22.1.1 Prior to submitting a Collocation Decommission Application, all CLEC's financial obligations with respect to the Collocation site to be decommissioned must be current, with the exception of formally disputed charges. CLEC financial obligations include payment of one hundred percent (100%) of all nonrecurring quoted charges and all applicable monthly recurring charges that are more than thirty (30) Days

past due.

8.2.1.22.1.2 CLEC must disconnect all services, including any administrative services, from the Collocation site to be decommissioned prior to submitting the Collocation Decommission Application. All of CLEC's administrative lines and End User Customer services need to be disconnected via the appropriate Access Service Request (ASR) or Local Service Request (LSR). If CLEC has not disconnected all services, all charges with respect to the Collocation site will continue to accrue and the Collocation Decommission Application will be rejected.

8.2.1.22.1.2.1 Prior to disconnecting its services, including direct CLEC-to-CLEC connections, CLEC must notify, in writing, all of its current End User Customers affected by the discontinuation of service. CLEC must submit an email notification with the Collocation Decommission Application representing to Malheur that all CLEC End User Customers have been properly notified. For direct CLEC-to-CLEC connection arrangements, CLEC should submit a letter of authorization (LOA) signed by both CLECs involved in the direct CLEC-to-CLEC connection arrangement. Failure to include such email notification or LOA will result in the rejection of the Collocation Decommission Application.

8.2.1.22.1.3 CLEC should remove its equipment prior to submitting a Collocation Decommission Application. Equipment includes all CLEC owned electronic equipment, equipment racks, mounting hardware, and CLEC supplied cable (including direct CLEC-to-CLEC cables), termination blocks and cage materials. If CLEC does not remove its equipment within thirty (30) Days of Malheur's acceptance of the Collocation Decommission Application, Malheur will send a notification stating the equipment is considered abandoned. Upon receiving notification of abandonment from Malheur, CLEC will have fifteen (15) Days to notify Malheur that the equipment is not abandoned and remove its equipment. If CLEC does not respond to the notification and remove the equipment and Malheur determines that the equipment has been abandoned, Malheur will send a final notification and bill CLEC for any and all claims, expenses, fees or other costs associated with the removal by Malheur of the abandoned equipment, including any materials used in the removal and the hourly labor rate charges. CLEC will hold Malheur harmless from the failure to return any such equipment, property or other items.

8.2.1.22.1.4 Malheur will remove all Collocation entrance facilities. For shared Collocation entrance facilities, Malheur will cut all fiber and/or copper Collocation entrance facilities at the splice point in the Collocation Point of Interconnection (C-POI). For express Collocation entrance facilities, Malheur will remove and dispose of the Collocation entrance fiber.

8.2.1.22.1.5 For Virtual Collocation, Malheur will automatically

remove all equipment within ninety (90) Days. Malheur will negotiate with CLEC to schedule the pick up of the equipment. There will be no charge for the removal of CLEC's Virtual Collocation equipment.

8.2.1.22.1.6 For Collocations with direct CLEC-to-CLEC connection arrangements, CLEC is required to disconnect and remove the direct CLEC-to-CLEC connections. Malheur prefers that CLEC disconnect and remove the direct CLEC-to-CLEC connection cables prior to submitting the Collocation Decommission Application. If CLEC is not able to disconnect and remove the cables prior to submitting the Collocation Decommission Application, CLEC will be allowed thirty (30) Days from Malheur's acceptance date of the Collocation Decommission Application to disconnect and remove the direct CLEC-to-CLEC connection cables. If CLEC has not removed the direct CLEC-to-CLEC connections, it will be treated as abandoned equipment.

8.2.1.22.1.7 CLEC will be eligible for a refund for all elements defined as either reusable or reimbursable, if acquired by another CLEC during the following defined time period. An inventory will be completed by Malheur and furnished to CLEC within ninety (90) Days of the Collocation Decommission Application acceptance identifying the reimbursable and reusable elements and the potential credit.

8.2.1.22.1.7.1 Reimbursable elements considered for a refund are: DS0, DS1, and DS3 termination cabling, and fiber terminations, excluding Collocation entrance facility cabling. These elements will be eligible for a refund for up to one (1) year after the date of decommissioning.

8.2.1.22.1.7.2 Reusable elements include components used to provision the original Collocation site (e.g., cage, bays, HVAC, cable racking). These elements will be eligible for a refund for up to three (3) years after the date of decommissioning.

8.2.1.22.1.8 CLEC is required to return the space to turnover condition. Turnover condition is defined as the same condition in which CLEC originally assumed the Collocation site. CLEC must relinquish security access if not currently leasing another Collocation site in the same Wire Center when verification of equipment removal is completed. Security access will be terminated within thirty (30) Days of receipt of an accepted Collocation Decommission Application, unless alternative arrangements have been agreed to by Malheur.

8.2.1.22.1.9 Ordering – CLEC should submit a Collocation Decommission Application form. Malheur will notify CLEC within one (1) business day if the prerequisites have been met. Malheur will validate the order within two (2) business days from receipt of the Collocation Decommission Application. Malheur will provide an inventory of the eligible reimbursable and reusable elements and the potential credits within ninety (90) Days of the Collocation Decommission Application acceptance.

8.2.1.22.1.10 Billing - Malheur will not charge for decommissioning Collocations unless equipment has been abandoned or the Collocation space has not been returned to turnover condition. Charges for work related to the removal of abandoned equipment or returning the Collocation space to turnover condition include miscellaneous hourly labor charges and, if applicable, dispatch charges will apply for unmanned Central Offices and Remote Collocations.

8.2.1.22.2 Collocation Transfer of Responsibility. Collocation Transfer of Responsibility is the transfer of a Collocation site from vacating CLEC (current CLEC leasing the space in the Premises) to an assuming CLEC. Collocation Transfer of Responsibility is available for Cageless Physical Collocation, and Virtual Collocation. All other types of Collocation to be transferred will be handled on an Individual Case Basis (ICB). There are two (2) types of Collocation Transfer of Responsibility: 1) Collocation Transfer of Responsibility Without Working Circuits – The Collocation is not serving any End User Customers and does not have active service terminations (e.g., Interconnection trunks or UNE Loops) or 2) Collocation Transfer of Responsibility With Working Circuits – The Collocation has active service terminations, such as Interconnection trunks or is serving End User Customers.

8.2.1.22.2.1 Generally, Collocation Transfer of Responsibility is not available if another CLEC or Malheur are waiting in queue for available space within the requested Premises; however, if assuming CLEC acquires all or substantially all of the Collocation sites of vacating CLEC in Malheur Premises in the state, such transfers shall not be subject to any queue for available space. In addition, regardless of any space requests that may be pending in a Malheur Premises, Collocation Transfer of Responsibility shall be available when vacating CLEC and assuming CLEC are affiliated corporate entities prior to or immediately after the proposed transfer, or the transfer is due to a bankruptcy court order. If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with Applicable Law in obtaining the transfer of the Collocation site.

8.2.1.22.2.2 Both vacating CLEC's and assuming CLEC's Interconnection Agreements with Malheur must contain finalized terms and conditions for Collocation Transfer of Responsibility and all associated services. Assuming CLEC is required to have an Interconnection Agreement with Malheur prior to submitting a Collocation Transfer of Responsibility request. Assuming CLEC will need to amend any previously existing Interconnection Agreement prior to submitting a Collocation Transfer of Responsibility request if its Interconnection Agreement does not contain the terms and conditions and rate elements for all services that will be transferred.

8.2.1.22.2.3 Collocation Transfer of Responsibility with working circuits is available if only administrative changes are required and the transfer does not involve translations work that needs to be processed in conjunction with the transfer. If translations work is needed, CLEC's transfer plans shall allow for the completion of the Collocation Transfer of

Responsibility prior to initiating any translation activity.

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

8.2.1.22.2.5 The Collocation site to be transferred is identified by vacating CLEC's eleven (11) character CLLI™ code. The Collocation site will be transferred "as is" and in its entirety. This includes, but is not limited to, Collocation entrance facilities from the Collocation - Point of Interface (C-POI) manhole, cables, Splitters, and working circuits, if applicable. If the Collocation site has a Common Area Splitter Collocation associated with it, the Common Area Splitter Collocation will be transferred as part of the Collocation Transfer of Responsibility.

8.2.1.22.2.6 The transfer of equipment between vacating CLEC and assuming CLEC will be the responsibility of vacating CLEC and assuming CLEC. Malheur is not responsible for the physical condition of vacating CLEC's equipment, with the exception of equipment associated with a Virtual Collocation, as set forth in CLECs' Interconnection Agreements. The negotiation of the transfer terms and conditions between vacating CLEC and assuming CLEC is the responsibility of those two parties. Malheur will not participate in these negotiations. Malheur will only manage the database and records transfer.

8.2.1.22.2.7 Assuming CLEC will provide the information Malheur will need to update the following items: Customer Name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), CLEC address, phone number, billing and contact information, and contract number. The Collocation eleven (11) character CLEC CLLI™ code will remain the same.

8.2.1.22.2.8 Submission of new connect, change, and disconnect orders will be restricted from quotation Acceptance until the transfer of the working circuits is complete. If new connect, change, and disconnect orders need to be submitted between quotation Acceptance and the completion of the transfer, they will be handled on an ICB and may affect the Ready for Service (RFS) date. Submission of Collocation augment orders will not be allowed from the time that the Collocation Transfer of Responsibility Application has been accepted by Malheur until assuming CLEC has accepted the quotation for the Collocation Transfer of Responsibility.

8.2.1.22.2.9 All work in progress related to the Collocation site and associated working circuits, if applicable, must either be completed or cancelled by vacating CLEC prior to the quotation Acceptance.

8.2.1.22.2.10 If vacating CLEC does not lease another Physical Collocation site at the specified Central Office at the time of the Collocation Transfer of Responsibility request, then vacating CLEC must

relinquish security access to the building.

8.2.1.22.2.11 Vacating CLEC's financial obligations to Malheur with respect to the Collocation site to be transferred must be met, with the exception of formally disputed charges, prior to submitting a Collocation Transfer of Responsibility Application. Vacating CLEC's financial obligations include payment of one hundred percent (100%) of all nonrecurring charges and all applicable recurring charges for the specific Collocation account that are more than thirty (30) Days past due. Vacating CLEC may meet its financial obligations by having them expressly assumed, in writing, by assuming CLEC and assuming CLEC pays such obligations at the time it accepts the quotation for Collocation Transfer of Responsibility.

8.2.1.22.2.12 Assuming CLEC's financial obligations to Malheur must be in good standing prior to submitting a Collocation Transfer of Responsibility Application, with the exception of formally disputed charges.

8.2.1.22.2.13 Vacating CLEC and assuming CLEC must provide a signed Transfer Authorization Agreement. Required information on the Malheur Transfer Authorization Agreement: Malheur Central Office Name, applicable CLLI™ codes, Collocation BAN numbers, and charges (from Exhibit A) for the transfer of the Collocation site.

8.2.1.22.2.14 Prior to submitting a Collocation Transfer of Responsibility Application without working circuits, vacating CLEC must ensure that no active circuits exist at the Collocation site to be transferred.

8.2.1.22.2.15 Prior to transferring a Collocation site with working circuits, vacating CLEC must notify, in writing, all of its current End User Customers that utilize the Collocation site's equipment or facilities of the transfer of service to assuming CLEC, unless vacating CLEC has a waiver from the FCC or other applicable regulatory authority. Vacating CLEC must provide an email notification to Malheur with the Collocation Transfer of Responsibility Application representing that all of its End User Customers have been properly notified or provide a copy of any applicable waiver.

8.2.1.22.2.16 If the Collocation site being transferred has a direct CLEC-to-CLEC connection arrangement, a letter of authorization (LOA) must be submitted with the Collocation Transfer of Responsibility Application, signed by both CLECs in the direct CLEC-to-CLEC arrangement authorizing the transfer of the direct CLEC-to-CLEC connection service to assuming CLEC. A separate LOA is required for each direct CLEC-to-CLEC relationship associated with the transferring Collocation site. Each LOA shall identify the CLECs, CLLI codes, and BANs for their respective Collocations.

8.2.1.22.2.17 Vacating CLEC and/or assuming CLEC will be

responsible for submitting Local Service Requests (LSRs) for Unbundled Loops and enhanced extended Loops (EELs). Assuming CLEC may submit LSRs once it has accepted the quotation for the Collocation Transfer of Responsibility and has received the preliminary APOT information from Malheur. Orders to transfer Local Interconnection Service (LIS) trunks and ancillary services (e.g., SS7, 911, operator services) with no translation activity, as well as private line and Access Services circuits, will be processed based on the information provided in the Collocation Transfer of Responsibility Application spreadsheet. Assuming CLEC is responsible for Directory Assistance (DA), operator services (OS), Directory Listings, Busy Line Verify/Busy Line Interrupt (BLV/BLI), and 911 changes, if applicable. Any SS7 changes will need to be made after the transfer is complete.

8.2.1.22.2.18 After the Collocation Transfer of Responsibility is complete, vacating CLEC, assuming CLEC, and Malheur are all required to sign the Malheur Services Transfer Agreement.

8.2.1.22.2.19 Billing. Vacating CLEC will not incur charges for the transfer of the Collocation site. Vacating CLEC is obligated to pay all recurring charges associated with the Collocation until Malheur completes the Collocation Transfer of Responsibility request. Assuming CLEC's quotation will reflect the following nonrecurring charges associated with the transfer of the Collocation site: Assessment Fee, payable regardless of whether the quotation is accepted or not, a Network Systems Administration Fee, and charges for processing the transfer of working circuits, if applicable. Upon completion of the Collocation Transfer of Responsibility, Malheur will begin Billing assuming CLEC for all recurring charges based on assuming CLEC's Interconnection Agreement and cease Billing vacating CLEC.

8.2.1.22.3 Abandoned Equipment. If Malheur finds, in the course of business, reasonable evidence to substantiate that any equipment or property of CLEC has been abandoned or left unclaimed in or at any Premises, Malheur shall notify CLEC in writing, via an electronic form, of the existence of such equipment or property and CLEC shall have sixty (60) Days from the date of receipt of such notice to remove such equipment or property from the Premises. If Malheur has not received any response to this notice within thirty (30) Days of the sending of the notice, Malheur shall send a copy of the notice to CLEC via registered mail. If, prior to the termination of the sixty (60) Day period, CLEC disputes that the equipment or property has been abandoned or left unclaimed at the Premises, CLEC shall provide written notice to Malheur of such dispute ("Resolution Request") and commence Dispute Resolution proceedings pursuant to Section 5.18 of this Agreement. If no Resolution Request has been delivered to Malheur within sixty (60) Days of the first written notice, all equipment or property of CLEC not removed from the Premises shall conclusively be deemed and construed to have been transferred, deeded, and assigned by CLEC to Malheur and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Malheur without further notice to CLEC and without obligation to account therefore, and CLEC shall reimburse Malheur for all reasonable expenses incurred in connection with the storage or other disposition of such

equipment or property. If CLEC delivers a Resolution Request but fails to commence Dispute Resolution proceedings pursuant to Section 5.18 of this Agreement or to otherwise resolve the dispute with Malheur, within thirty (30) Days of the delivery of such Resolution Request, then thirty (30) Days after the date of the Resolution Request, all equipment or property of CLEC not removed from the Malheur Premises shall conclusively be deemed and construed to have been transferred, deeded, and assigned by CLEC to Malheur and may be appropriated, sold, stored, destroyed and/or otherwise disposed of by Malheur without further notice to CLEC and without obligation to account therefore, and CLEC shall reimburse Malheur for all reasonable expenses incurred in connection with the storage or other disposition of such equipment or property. CLEC hereby releases and agrees to defend, indemnify, and hold harmless Malheur from and against any and all costs, expenses, claims, judgments, damages, liability or obligation arising out of or in connection with Malheur's exercise of any or all of its rights under this Section. Notwithstanding the provisions of this Section, where CLEC has submitted a Decommissioning Application, the provisions of Section 8.2.1.22.1 of this Agreement, shall govern the equipment or property of CLEC and not this Section unless CLEC fails to remove its equipment or property in accordance with the terms of Section 8.2.1.22.1 of this Agreement.

8.2.1.23 Malheur 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 Malheur Premises; or to CLEC's own 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, Malheur shall consider all information provided by CLEC in the Collocation 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 Malheur. 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 User Customer's 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 a Collocation Application 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 Malheur Premises to its non-adjacent Collocation space or to another CLEC's Collocation within the same Malheur Premises at the ICDF.

8.2.1.23.1.2 Malheur will provide the capability to combine these separate Collocations through an Interconnection Distribution Frame (ICDF). This is accomplished by the use of CLEC's 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 End User Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection.

8.2.1.23.1.5 If two (2) CLECs are involved, one (1) CLEC acts as the "ordering" CLEC. The ordering CLEC identifies both connection CFAs 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. Malheur 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 Malheur will provide CLEC the same connection to the network as Malheur uses for provision of services to Malheur End User Customers. The direct connection to Malheur's network is provided to CLEC through a direct connection to Malheur's existing Cross Connection network. CLEC and Malheur 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 Malheur Cross Connection frames using standard engineering principles. CLEC terminations will share frame space with Malheur terminations on Malheur frames without a requirement for an intermediate device.

8.2.1.26 If CLEC disagrees with the selection of the Malheur Cross Connection frame, CLEC may request a tour of the Malheur Premises to determine if Cross Connection frame alternatives exist, and may request a connection to 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) Days. CLEC must pay all associated conversion charges.

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

8.2.1.29 Malheur will provide CLEC with written notification at least five (5) business days before any scheduled non-emergency AC or DC power work in the collocated facility that may cause a power disruption to CLEC equipment located in the Malheur facility. This does not include notification of routine power testing or power installation work not expected to cause a power disruption. Malheur will use diligent efforts to notify CLEC by the Abnormal Condition Report (ACR) of: (a) general power outages as soon as Malheur 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, Malheur 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 Optional DC Power Measurement. CLEC will order DC power to meet its needs with a twenty (20) amperes (amp) per feed minimum. If CLEC orders more than sixty (60) amps, Malheur typically terminates such feed on a power board. If CLEC orders sixty (60) amps or less, the power feed typically terminates at a battery distribution fuse board (BDFB). No power measurements are performed at a BDFB. Therefore, for sixty (60) amps or less, the power usage rate is based on CLEC ordered amps. For power feeds of greater than sixty (60) amps terminated at the power board, Malheur will measure usage on a semi-annual basis if CLEC orders Optional DC Power Measurement. Malheur will also take a reading within thirty (30) Days of a written request by CLEC. Malheur will perform a maximum of four (4) readings per year for a particular Collocation site. Until the routine semi-annual reading or until such time that Malheur makes a reading based on a written request, Malheur will bill CLEC based on the amount of power ordered. Based on the reading, Malheur will adjust the new monthly usage rate to CLEC's actual usage rate on a going forward basis.

8.2.1.31 Joint Testing. Joint Testing allows CLEC to request Malheur to participate in Joint Testing of CLEC terminations at the Interconnection Distribution Frame (ICDF). CLEC may request Joint Testing on the Collocation Application form or by sending a separate Joint Testing Application form. Collocation and Joint Testing Application forms are available in the PCAT. CLEC must specify on its application the

terminations to be tested and the type of tests to be performed with Malheur. CLEC must provide contact information on the application for Malheur to arrange the Joint Testing date and time. Once CLEC has completed its installation work and is ready for testing, CLEC formally requests Joint Testing via e-mail to RFSMET@Malheur.com. Upon receipt of request Malheur and CLEC will promptly meet and agree upon a date to perform Joint Testing, which shall take place no later than thirty (30) Days after the request.

8.2.1.31.1 Malheur will only test between CLEC Collocation and the ICDF once CLEC equipment is in place. Joint Testing is only available for the terminations identified on the Collocation Application or Joint Testing Application. If CLEC wants additional terminations tested that are not identified on its initial application, CLEC will need to complete a new Joint Testing Application.

8.2.1.31.2 Each Party will provide appropriate test equipment for its technicians. Malheur will assist CLEC in conducting continuity tests on terminations at the ICDF. Malheur will not operate CLEC test equipment. If errors are found during the Joint Testing, Malheur will only repair Malheur network faults. CLEC is responsible for replacement or repair of CLEC-provided facilities.

8.2.1.31.3 If during the scheduled Joint Testing, the Malheur-caused error rate is more than two percent (2%) on the terminations identified for testing, Malheur will not charge for this Joint Testing. If there are less than two percent (2%) errors found or if the errors found are facility errors on CLEC provided facilities, Malheur will charge for the Joint Testing. One (1) pair is counted as two (2) terminations and errors are counted on a one (1) termination basis. If CLEC requests that the charges be waived because Malheur errors are found during Joint Testing, Malheur may access CLEC's Collocation space to identify if the facility cabling sequence is correct, per applicable standards. CLEC may review Malheur facility cabling at the ICDF to verify the cable sequence, per applicable standards.

8.2.1.32 DC Power Reduction. DC Power Reduction With Reservation allows CLEC to reserve a fuse or breaker position on the power board or battery distribution fuse board (BDFB) when reducing a secondary power feed to zero. CLEC will pay a monthly power maintenance charge to retain the existing power cabling and fuse position for future power augment requests or until such time as CLEC notifies Malheur it wishes to discontinue the option. DC Power Reduction Without Reservation allows CLEC to reduce the ordered amps on a primary or secondary feed to a minimum of twenty (20) amps.

8.2.1.32.1 Applications for DC Power Reduction may be submitted only for Collocation sites that have been completed and accepted by CLEC, otherwise CLEC should follow standard change or augment procedures including the applicable rates for changes or augments. On the Collocation Application, CLEC should indicate that it is a request for DC Power Reduction and identify the specific power feeds to be reduced. Malheur will notify CLEC of any deficiencies in the Collocation Application, within ten (10) Days of receipt. A quotation for the DC Power Reduction will be provided to CLEC within twenty-five (25) Days. The quoted nonrecurring charges will be honored for thirty (30) Days from the

quotation. CLEC payment of all quoted nonrecurring charges constitutes acceptance and Malheur will then perform the work. If CLEC accepts the quotation within seven (7) Days, Malheur shall complete the DC Power Reduction within ninety (90) Days of receipt of the Collocation Application. If CLEC accepts the quotation after seven (7) Days, Malheur shall complete the DC Power Reduction within ninety (90) Days of receipt of CLEC's acceptance.

8.2.1.32.2 CLEC assumes all responsibility for outages or impacts to CLEC services and equipment due to the reduction in DC power. Restoration of the DC power is contingent upon the desired power and fuse availability.

8.2.1.32.3 Before submitting a Collocation Application requesting DC Power Reduction, CLEC's financial obligations for the Collocation site must be current, with the exception of formally disputed charges. Billing to CLEC will be revised to reflect the reduced DC power upon receipt of payment of the quoted charges effective back to the date of acceptance by Malheur of the Collocation Application.

8.2.1.32.4 If a shortage of fuse positions is imminent, Malheur will notify CLEC of the need to exercise its option to reuse the power feed and fuse, or relinquish the fuse position for use by another CLEC or Malheur. Upon receipt of such notification, CLEC must request restoration of the secondary power feed to at least twenty (20) amps or return the fuse position to Malheur within thirty (30) Days.

8.2.1.33 Collocation Available Inventory. Collocation Available Inventory provides CLEC with information about the availability of (a) returned Collocation sites and elements under Malheur's control ("Malheur Postings") and (b) CLEC controlled sites that may be posted are available for a Transfer of Responsibility ("CLEC Postings"). Malheur and CLECs may post available Collocation sites on Malheur's wholesale web site at: <http://www.qwest.com/wholesale/pcat/colloclassifieds.html>. CLEC must either have an approved Interconnection Agreement or is currently negotiating with Malheur to have an interim Interconnection Agreement with the specific type of Collocation to be obtained. If the Interconnection Agreement is pending approval, CLEC must execute an early ordering letter. Malheur reserves the right to remove Malheur Postings to satisfy CLEC Collocation Applications or Malheur space requirements. Malheur shall not use the Malheur Postings as a basis to claim exhaust in any Malheur Premises.

8.2.1.33.1 CLEC obtaining a Collocation site from Malheur Postings must not have any overdue financial obligations owed to Malheur for Collocation, with the exception of formally disputed charges. CLEC will be required to pay a minimum of six (6) months of space construction and floor space lease recurring charges if CLEC terminates its lease prior to six (6) months occupancy.

8.2.1.33.2 Malheur Postings. Collocation sites available in Malheur Postings may be partially or fully completed before being returned to Malheur inventory. Cageless Physical Collocation sites will be offered in the Malheur Postings and will be available under the terms and conditions set forth in the Interconnection Agreement of the CLEC acquiring the Collocation space. CLEC may request to add to or complete the Collocation site to its specifications. CLEC may also request that Malheur reduce the cable terminations and CLEC

will be charged for the removal of such cable terminations.

8.2.1.33.3 All services that were previously connected to the Collocation (e.g., UNEs, CLEC to CLEC, administrative lines, and Finished Services) will be disconnected before the site is listed in the Malheur Postings. Power, grounding, and Entrance Facilities will also be disconnected before the site is listed. Malheur shall inventory all reusable and reimbursable elements and include them in the Collocation site information.

8.2.1.33.4 Malheur may also elect to offer Collocation sites returned through bankruptcy or abandonment consistent with Applicable Law (i.e., "Special Sites"). These Collocation sites will not be decommissioned and will be posted as unverified sites with equipment which may include electronic equipment, racks, cages, DC power, grounding and terminations. It is expressly understood and agreed that Malheur is selling equipment that is used or surplus equipment on an "as is, where is" basis with all faults, latent and patent, and the equipment is conveyed without any Malheur warranties or representations of any kind, express or implied. CLEC is responsible for all software and software license agreements for any equipment conveyed as part of a Special Site. CLEC is responsible for handling, scrapping, destruction or other disposition of any equipment conveyed as part of a Special Site and shall conform and comply with: (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 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 Malheur 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, CLEC shall be listed as the generator, arranger and owner of the materials.

8.2.1.33.5 CLEC will submit a Collocation Application indicating a specific Collocation site from the Collocation Available Inventory. Malheur will follow the standard Collocation provisioning intervals for the type of Collocation as included in CLEC's Interconnection Agreement. During preparation of the quotation, Malheur will validate all reusable elements and send an inventory verification letter. After receipt of the validated inventory, CLEC may cancel the Collocation

Application or submit a change to the pending Collocation Application. Any cancellation due to differences between the Malheur Posting and actual inventory will not result in a QPF or Engineering and Design Fee being charged.

8.2.1.33.6 Charges for Collocation sites listed in the Malheur Postings will be on a site specific basis, according to assuming CLEC's Interconnection Agreement and its requested work in the Collocation Application. Assuming CLEC will receive a fifty percent (50%) discount on nonrecurring reusable elements, if any, as defined in Section 8.2.1.22.

#### 8.2.1.34 CLEC Collocation of Splitters

8.2.1.34.1 If CLEC elects to have Splitters installed in Malheur Wire Centers via the standard Collocation arrangements, CLEC will either purchase the Splitters or have Qwest purchase the Splitters subject to full reimbursement of the cost of the Splitters plus any pass through of actual vendor invoice costs, including but not limited to taxes, shipping and handling. The Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. CLEC will be responsible for installing and maintaining the Splitters in its Collocation areas within Malheur Wire Centers.

8.2.1.34.2 Reclassification allows a CLEC that has existing spare terminations to reclassify those terminations for UNE or other services as necessary. Reclassification is required when the terminations for the requested services are inventoried in a database different from the database of the existing spare terminations. A spare termination is a CLEC termination that is not in use and has no pending orders against it.

8.2.1.34.3 CLEC may designate some or all of its existing tie cables for use in connection with UNEs or other services. Malheur will perform any necessary tie cable reclassifications, frame re-stenciling, and related work for which it is responsible. Charges will apply pursuant to Exhibit A of the Agreement.

8.2.1.34.4 Two (2) ITPs and two (2) tie cables will be needed to connect Splitters to the Malheur network. One (1) 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 Splitter located in CLEC's Collocation area. The voice and data traffic will be separated at the 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.

8.2.1.34.5 Interconnection Tie Pairs and Tie Cables. There are two (2) types of ITP arrangements for connecting the Malheur network to the CLEC provided Splitter, depending on whether CLEC elects to use an ICDF or direct connections.

8.2.1.34.5.1 CLEC may elect to use an ICDF. In this instance, one (1) 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 (2) pairs of the tie cable must be used: one (1) 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.

8.2.1.34.5.2 CLEC may elect to use direct connections between the CLEC-provided Splitter and the COSMIC™/MDF. In this instance, Malheur will provide one (1) tie cable between each module of the COSMIC™/MDF and the CLEC-provided Splitter. One (1) 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 CLEC's cost, to the extent feasible, Malheur shall consolidate CLEC's requirements with the requirements of Malheur and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the parties, including Malheur. Malheur will provide, for each Shared Loop, the tie cable pair assignments.

8.2.1.34.6 The Demarcation Points between Malheur'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 CLEC's Collocation.

8.2.1.35 Collocation Joint Inventory Visit. Collocation Joint Inventory Visit allows CLEC to request a comprehensive visit with Malheur at an existing Central Office Collocation site. The purpose of this Joint Inventory Visit is to review space, power, terminations, synchronization, administrative lines, virtual equipment, common area splitter, AC outlets, and to verify billable rate elements versus actual billing.

8.2.1.35.1 There will be no time allocated during the visit for testing or repairing items identified. The Joint Inventory Visit Process excludes physical review of the Entrance Facility POI location. Inventory will be documented and any deviations identified on a "Collocation-Joint Inventory Visit Form." This form will become the basis for a follow-up corrective action plan based on mutual agreement. A copy will be provided to CLEC prior to the wrap-up conference call.

8.2.1.35.2 Joint Inventory Visit is available for any Central Office premise type of Collocation.

8.2.1.35.3 Joint Inventory Visit quotation will be communicated from the Malheur Collocation Project Management Center (CPMC) via email to CLEC and followed by an invoice requiring 100% payment. Quotations are sustainable

upon receipt, since the shortened timeframe requires immediate processing by Malheur.

8.2.1.35.4 The visits will be conducted during normal business hours defined as: Monday through Friday from 8 am to 5 pm local time excluding Malheur recognized holidays.

8.2.1.35.5 The Malheur employee conducting the visit will be a knowledgeable management employee. The Malheur representative will be identified by a State Interconnect Manager (SICM).

8.2.1.35.6 The overall process for a Collocation Joint Inventory Visit will be sixty (60) Days from receipt of a valid and complete application to completion of the Joint Inventory Visit, subject to scheduling availability of both Malheur and the CLEC.

8.2.1.35.7 A maximum of two scheduling visits will be planned subject to a minimum forty-eight (48) hour cancellation policy. Any cancellation less than forty-eight (48) hours prior to the scheduled Joint Inventory Visit time or failure to conduct the visit by CLEC will result in CLEC being billed and no deliverables received.

8.2.1.35.8 CLEC must submit a "Joint Inventory Visit Application" to order a Collocation Joint Inventory Visit. The Joint Inventory Visit Application is available at <http://www.qwest.com/wholesale/pcat/collocation.html#imp>.

8.2.1.35.9 Each site requested will require a separate application form. This is defined as each eleven digit CLLI code location.

8.2.1.35.10 CLEC will receive an email acknowledgment of the application receipt and validation or feedback on any information requiring clarification within one (1) business day.

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

8.2.2.1 Malheur 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, Malheur 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 Malheur.

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

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

8.2.2.4 CLEC shall ensure that upon receipt of CLEC's virtually collocated equipment by Malheur, all warranties and access to ongoing technical support are

passed through to Malheur 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 Malheur.

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 Malheur 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 Malheur equipment located in Malheur'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 Malheur's initial direct training charges associated with training Malheur employees for the maintenance, operation and installation of CLEC's virtually collocated equipment when such equipment is different than the standard equipment used by Malheur in that Premises. This includes per diem charges (i.e., expenses based upon effective Malheur labor agreements), travel and lodging incurred by Malheur 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 Malheur's fault or negligence.

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

8.2.3.1 Malheur shall provide Cageless Physical Collocation to CLEC for access to UNEs and ancillary services and Interconnection, except that Malheur may provide Virtual Collocation if Malheur 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 Intentionally Left Blank.

8.2.3.4 Malheur 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 Malheur constructs the collocated space, Malheur will ensure that the necessary construction work (e.g., racking and ducting ) 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 Generally, CLEC owns or leases and is responsible for the installation, maintenance and repair of its equipment located within the physically collocated space leased from Malheur. One exception is the Bay itself.

8.2.3.6.1 This Section allows CLEC to request Malheur to procure and install necessary equipment bay infrastructure for CLEC. CLEC agrees to provide Malheur with all bay specifications needed to procure the proper bay.

8.2.3.6.2 Upon receipt of a complete Collocation Application where the CLEC has requested that Malheur procure and install the Cageless bay infrastructure, Malheur will review the bay specifications provided on the Application. Within three (3) Days of validation of the application, Malheur will contact CLEC with any questions.

8.2.3.6.3 If Collocation Entrance Facilities and space are available, Malheur will develop a price quotation within twenty-five (25) Days of completion of the feasibility study. Price quotations will be honored for thirty (30) Days from the date the quotation is provided. During this period the Collocation Entrance Facility and space are reserved pending CLEC's Acceptance of the quoted charges.

8.2.3.6.4 Within thirty (30) Days of receipt of the quotation, CLEC must submit Acceptance with 50% payment of the nonrecurring charges or acknowledge non-Acceptance of the quoted charges.

8.2.3.6.5 Upon receipt of Acceptance and 50% payment of the quoted nonrecurring charges, Malheur will procure and install the equipment bay on behalf of CLEC. The equipment bay installation will be completed with the Standard Installation Intervals listed in this Agreement.

8.2.3.6.6 Upon completion of the Equipment Bay installation, CLEC assumes ownership of the Equipment Bay and is responsible for removal of the bay upon Decommissioning of the site. Equipment includes all CLEC owned electronic equipment, equipment racks, mounting hardware, and CLEC supplied cable (including direct CLEC-to-CLEC cables).

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

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

8.2.3.9 If, during installation, Malheur 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 Malheur, Malheur has the right to stop all installation work until the situation is remedied. Malheur shall provide 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 Malheur locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Malheur contends CLEC's equipment fails to meet. If such conditions pose an immediate threat to the safety of Malheur employees, interfere with the performance of Malheur's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Malheur may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. In the event that CLEC disputes any action Malheur seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission or a court of competent jurisdiction.

8.2.3.10 All equipment placed will be subject to random safety audits conducted by Malheur. 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, Malheur 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. Malheur shall provide 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 Malheur locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Malheur contends CLEC's equipment fails to meet. If CLEC fails to correct any non-compliance within fifteen (15) Days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15) 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, Malheur may pursue immediate resolution by the Commission or a court of competent jurisdiction. If there is an immediate threat to the safety of Malheur employees, or an immediate threat to the physical integrity of the conduit system, cable facilities, or other equipment in the Premises, Malheur may perform such work and/or take such action as is necessary to correct the condition at CLEC's expense.

8.2.3.11 Malheur shall provide basic telephone service with a connection jack at the request of CLEC for Cageless Physical Collocation space. Upon CLEC's request, this service shall be available per standard Malheur business service Provisioning processes and rates.

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, Malheur will reduce the minimum square footage accordingly). Requests for

multiple bay space will be provided in adjacent bays where possible. When contiguous space is not available, bays may be commingled with other CLECs' equipment bays. CLEC may request, through the Malheur Space Reclamation Policy, a price quotation to rearrange Malheur 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. Malheur 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 Cageless Physical Collocation and Virtual Collocation. Fiber Entrance Facilities provide the connectivity between CLEC's collocated equipment within the Malheur Wire Center and a Collocation Point of Interconnection (C-POI) outside the Malheur 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 Malheur's Wire Center. Malheur 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 Malheur from the FDP to continue the run to CLEC's leased Collocation space ( Cageless Physical Collocation) or CLEC's equipment (Virtual Collocation). The Malheur-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 an 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 twelve (12) fibers. CLEC's fiber cable is spliced into a Malheur-provided shared fiber entrance cable that consists of six (6) buffer tubes containing twelve (12) fibers each for a seventy-two (72) fiber cable. The seventy-two (72) fiber cable shall be terminated on a Fiber Distribution Panel (FDP). A twelve (12) fiber Interconnection cable is placed between CLEC's Collocation space and the FDP. The FDP provides Malheur 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 Malheur Wire Center. CLEC's fiber cable is spliced into a Malheur-provided shared fiber entrance cable in twelve (12) fiber increments. The Malheur fiber cable consists of six (6) buffer tubes containing twelve (12) fibers each for a seventy-two (72) fiber cable. The seventy-two (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 four (4) and twelve (12) fiber options connect the second fiber distribution panel and equipment locations in the Malheur Wire Center. This option has the ability to serve multiple locations or pieces of equipment within the Malheur 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 (1) form of Collocation to another.

8.2.4.3.3 Express Fiber Entrance Facility – Malheur 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 Malheur Wire Center meets requirements. This option will not be available if there is only one (1) conduit with two (2) unused innerducts (one (1) for emergency restoral and one for a shared entrance cable).

8.2.4.4 Malheur will designate the location of the C-POI for Virtual, 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 Malheur shall provide an Interconnection point or points, physically accessible by both Malheur and CLEC, at which the fiber optic cable carrying CLEC's circuits can enter Malheur's Wire Center, provided that Malheur shall designate Interconnection points as close as reasonably possible to its Premises. Malheur shall offer at least two (2) such Interconnection points at each Malheur Wire Center when at least two (2) entry points pre-exist and duct space is available. Malheur will not initiate construction of a second, separate Collocation Entrance Facility solely for Collocation. If Malheur 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 Malheur 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. Malheur offers Microwave Entrance Facilities, on Premises owned or controlled by Malheur, to access CLEC transmission equipment collocated on or inside the Malheur 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 Malheur 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 Malheur's network or access to Malheur's Unbundled Network Elements.

8.2.4.9.1 Malheur 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 Malheur 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 Malheur 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 structural analysis or CLEC can request that Malheur perform either of these functions. CLEC will submit a Microwave Entrance Facility Application for each antenna arrangement and each Malheur Premises requested. A site visit will include appropriate Malheur 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) Days, or as soon thereafter as can be scheduled by the Parties, of receipt by Malheur of CLEC's Microwave Entrance Facility Application. If CLEC performs the structural analysis or line-of-sight feasibility, it shall submit a response regarding its analysis to Malheur and Malheur will only bill for an escort fee per site requested. If either Party disputes the technical feasibility, space availability, or other conditions proposed by Malheur, the Parties will promptly petition the Commission for resolution of the dispute.

8.2.4.9.3 If Malheur performs the feasibility analysis, a response will be provided to CLEC within thirty (30) 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, Malheur will provide a quotation for the Microwave Entrance Facility with the quotation 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 CLEC's facilities. If Malheur's assistance is required in order for CLEC to obtain necessary licenses or permits, Malheur 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. Malheur will do all building penetration and Malheur 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 Malheur or other CLECs' equipment. Each transmitter individually and all transmitters collectively, for Malheur, Malheur 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 of the Collocation arrangement or the Microwave Entrance Facility, 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, Malheur shall impose no charges on CLEC for such work. In the event CLEC fails to remove its microwave equipment, CLEC shall be liable to Malheur for all reasonable costs of removal, restoration of the property, storage, and transportation to CLEC of such microwave equipment incurred by Malheur.

## **8.2.5 Terms and Conditions – ICDF Collocation**

8.2.5.1 Interconnection Distribution Frame (ICDF) Collocation is available if CLEC has not obtained Cageless Physical Collocation, but requires access to Malheur's 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 Malheur will terminate the Unbundled Network Elements, Finished Services 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 DS1 and DS3 services; c) new Interconnection Distribution Frame; d) existing toll frame; e) fiber distribution panel; and, f) existing intermediate frame. Malheur-provided combinations in accordance with Sections 9.1 and 9.23.3.7 are not provided by Malheur in CLEC's ICDF Collocation space.

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

#### **8.2.6 Intentionally Left Blank**

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#### **8.2.9 Terms and Conditions – Common Area Splitter Collocation**

8.2.9.1 If CLEC elects to have Splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the Splitters will be installed in those Wire Centers in one (1) of the following locations: (a) in a relay rack as close to CLEC's DS0 termination points as possible; (b) on an ICDF to the extent such a frame is available; or (c) where options (a) and (b) are not available, or, in Wire Centers with network access line counts of less than 10,000, on the COSMIC™/MDF or in some other appropriate location such as an existing Qwest relay rack or bay. In Wire Centers with access line counts greater than 10,000, when all common area Splitter bays and racks are fully utilized, space permitting, Qwest will allow CLEC to place Splitters on the COSMIC™/MDF. CLEC either may purchase Splitters or have Qwest purchase the Splitters subject to full reimbursement of the cost of the Splitters plus any pass through actual vendor invoice costs, including but not limited to taxes, shipping and handling. The Splitters must meet the requirements for Central Office equipment Collocation set by the FCC. Qwest will be responsible for installing and maintaining the Splitters, but CLEC will lease the Splitters to Qwest at no cost. Qwest may commingle the Splitter shelves of different CLECs in a single relay rack or bay. Qwest will not be responsible for shortages of Splitters or Qwest's inability to obtain Splitters from vendors, if acting as purchasing agent on behalf of CLEC.

8.2.9.2 Two (2) ITPs and four (4) tie cables will be needed to connect the Splitters to the Qwest network. One (1) 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 Splitter. The voice and data traffic will be separated at the 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.

8.2.9.3 Qwest will provide the cabling used for tie cables between the Splitter and the ICDF. The Splitter Tie Cable Connection Charge will apply.

8.2.9.4 The Demarcation Point between Qwest's network and CLEC's network will be at the place where the data Loop leaves the 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.

8.2.9.5 New Splitter shelves may be ordered at the same time as a new Collocation on a single Collocation Application form and a single order processing charge will apply. New Splitter shelves may be ordered with an existing Collocation by

submitting a new Collocation Application and the applicable fee. Standard intervals as contained in Exhibit C will apply.

#### 8.2.9.6 Splitter Deployment

8.2.9.6.1 New applications for installation of Splitters will be processed in the manner outlined in the Collocation Section for Cageless Collocation.

8.2.9.6.2 CLEC may submit applications for additional DS0 tie cable terminations and/or reclassification to support UNE or other services. Qwest will process any such applications for augmentation and/or reclassification of DS0 tie cable terminations under intervals as outlined below in this Section.

8.2.9.6.3 Augmentation intervals will be thirty (30) Days, subject to the following terms and conditions identified below:

8.2.9.6.3.1 The interval for reclassification will be fifteen (15) Days, subject to the following terms and conditions. If the requested reclassification engineering results in additional requirements for DS0 tie cable terminations or tie cable support, the interval will default to thirty (30) Days.

8.2.9.6.3.2 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, 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 day period, or if the subject equipment is not provided in a timely manner, Qwest will install the subject equipment when available.

### **8.3 Rate Elements**

Rate elements for Collocation are included in Exhibit A.

#### **8.3.1 Rate Elements - All Collocation**

8.3.1.1 Malheur 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 Application. A quotation is then developed by Malheur 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 quotation in support of Collocation:

8.3.1.3 Quotation Preparation Fee. A non-refundable charge for the work required to verify space and develop a price quotation for the total costs to CLEC for its Collocation request.

8.3.1.3.1 Planning and Engineering Fee. Cable Augment Quotation Preparation Fee. A non-refundable nonrecurring charge for the work required to plan, design, engineer, and develop a price quotation for the total costs to CLEC for its Collocation request to augment existing terminations.

8.3.1.4 Collocation Entrance Facility Charge. Provides for the fiber optic cable (in increments of 12 fibers) from the C-POI utilizing Malheur owned, conventional single mode type of fiber optic cable to the collocated equipment (for Virtual Collocation) or to the leased space ( 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 the request. The -48 volt DC Power Usage Charge applies to the quantity of -48 volt capacity specified by CLEC in its order on a per ampere (amp) basis. There is a one (1) amp minimum charge for -48 volt DC power usage.

8.3.1.6.1 Optional -48 Volt DC Power Usage Charge is available for orders of greater than sixty (60) amps. If CLEC orders Optional DC Power Measurement, Malheur will initially apply the -48 Volt DC Power Usage Charge from Exhibit A to the quantity of power ordered by CLEC. Malheur will determine the actual usage at the power board as described in Section 8.2.1.30. Malheur will adjust the monthly usage rate based upon the actual usage on a going forward basis. There is a one (1) amp minimum charge for -48 volt DC power usage.

8.3.1.6.2 Power Plant per Amp. Provides plant infrastructure to support the -48 volt DC power to CLEC collocated equipment. Power plant is built to support the amount of DC power usage ordered by CLEC and may be reduced with a power reduction request.

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 Malheur 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 (3) hours. The minimum call-out charge shall apply when no other employee is present in the location, and an 'off-shift' Malheur employee (or contract employee) is required to go 'on-shift' on behalf of CLEC.

#### 8.3.1.9 Intentionally Left Blank.

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.

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 an 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 Malheur, on the ICDF at any one time. This element includes Malheur's provided termination blocks or panels and the associated cost for placement of the blocks or panels. Cabling is also required and may be provided by CLEC or at its request, Malheur will provide cabling at an additional charge. When Malheur 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 Malheur uses to connect to that specific service. For example, if CLEC wants to connect directly from its 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 its desired option via the Direct Connection Collocation Application. If CLEC chooses a demarcation inside the Collocation space, CLEC 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, Malheur 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 it 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, Malheur shall consolidate CLEC's requirements with the requirements of Malheur and other CLECs into a single MELD™ run whenever feasible. Costs of such consolidated MELD™ runs shall be prorated among the parties, including Malheur. 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 DS0, 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 Malheur 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). 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 one hundred (100) or per termination; DS1 in increments of twenty-eight (28) or per termination; and DS3 in increments of one (1) coaxial cable termination or fiber in twelve (12) fiber strands (six (6) fiber pairs).

8.3.1.12 Security Charge. This charge applies to the keys/card and card readers required for CLEC access to the Malheur Premises for the purpose of Collocation. There are two monthly recurring rate elements associated with Security Access. The first rate element is per access card, per CLEC employee, per month. The second rate element is the number of card accessible premises, per CLEC employee, per month, as included in Exhibit A to this Agreement.

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 Malheur 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 Malheur 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 ( Cageless Physical Collocation) or to the collocated equipment (for Virtual Collocation). It is charged per foot, per A and B feeder.

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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 preliminary

rooftop engineering and survey analysis, Premises structural analysis and line of sight feasibility, if performed by Malheur; space rental for the rooftop and existing antenna support structure, cable racking, cable, building penetration for cable entry, and other work as required.

8.3.1.18 Joint Testing Charges: The charges for Joint Testing are nonrecurring. Set up and testing charges are based on the virtual collocation maintenance rate specified in Exhibit A. The set up fee has a minimum of one (1) hour per joint testing request at the specified Virtual Collocation maintenance rate, specified in Exhibit A, and a per half-hour charge at the same rate for any time exceeding the one (1) hour for testing. Malheur will not charge for the Joint Testing based on the Joint Testing Malheur-caused error rate as described in Section 8.2.1.31.3.

8.3.1.19 DC Power Reduction and Restoration Rates: CLEC will be charged the applicable nonrecurring Quote Preparation Fee (QPF) or Engineering and Design Fee to perform the engineering and planning work to process the DC Power Reduction or DC Power Restoration request per Collocation space. Nonrecurring charges associated with the work required to reduce the fuse or breaker size, rewiring the power lead at the power source or relocation of the power feed will be on an ICB basis. When power is restored, nonrecurring charges will be assessed on an ICB basis for the work required to restore the power utilizing standard power rate elements for power usage, labor and cabling charges. CLEC will be charged a nonrecurring charge for moves between the battery distribution fuse board and the power board (for location changes) necessary for DC power reduction/restoration. A recurring power maintenance charge is associated with the option to hold the power infrastructure for a secondary feed for potential future use by CLEC. The recurring charge will terminate on the date a restoration job completes for the power feed or CLEC returns the fuse position to Malheur. If Malheur is unable to provide the requested power restoration of the held feed(s) due to exhaustion of power capacity, Malheur will refund all Power Maintenance Charges collected since the reservation was accepted.

8.3.1.20 Collocation Available Inventory Charges. For standard Malheur Postings of Collocation Available Inventory, CLEC will be charged the standard Collocation rates, including the applicable QPF or Engineering and Planning Fee. CLEC will also be charged for removal of terminations. For Special Sites, assuming CLEC will be charged a Special Site Assessment Fee instead of the standard QPF, unless CLEC requests an augment to the existing site in its initial Collocation Application, then the standard approved QPF will be charged as defined in Exhibit A. CLEC ordering a Special Site, in addition to the standard Collocation rates, will also be charged a nonrecurring Network Systems Administration Fee for the systems and record updates required to transfer the Collocation Site to assuming CLEC and, if a site survey is requested by CLEC, a Site Survey Fee. Any CLEC equipment left in the site will be transferred to assuming CLEC at no charge. Recurring charges for all products and services will be charged at rates listed in assuming CLEC Interconnection Agreement without a discount.

8.3.1.21 Collocation Joint Inventory Visit Charges. The pricing for Joint Inventory Visit is a state-specific, nonrecurring charge identified in Exhibit A.

### **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. Malheur 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 Malheur personnel on a metropolitan service area basis provided by the vendor of CLEC's virtually collocated equipment when that equipment is different from Malheur-provided equipment. Malheur will require three (3) Malheur employees to be trained per metropolitan service area in which CLEC's virtually collocated equipment is located. If, by an act of Malheur, trained employees are relocated, retired, or are no longer available, Malheur will not require CLEC to provide training for additional Malheur 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 seventy-eight (78) inches. The monthly rate is applied per shelf. CLEC may request use of alternate bay heights of nine (9) foot and eleven (11) foot six (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 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 Malheur Premises areas surrounding CLEC-provided equipment bay and general repair and maintenance. The Floor Space Lease includes required aisle space on each side of CLEC-provided equipment bay.

8.3.2.7 Space Construction. This rate element includes the material and labor to construct and prepare the space, including all support structure, cable racking specific to the bay site. It also includes air conditioning (to support CLEC loads specified), lighting (not to exceed two (2) watts per square foot), and convenience outlets and the cost associated with space engineering. These elements have recurring and nonrecurring

charges.

8.3.2.8 Cable Rack. This rate element includes the metal structure that holds and routes cabling throughout the Malheur Central Office that attaches to the bay specific racking. This element has recurring and nonrecurring charges.

### 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 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. Pricing for the Space Construction and Site Preparation is described in Exhibit A. 8.3.3.1.1 Space Construction and Site Preparation Single Bay Credit. A credit is applied to the standard two-bay Space Construction and Site Preparation fee included in Exhibit A when CLEC requests a cageless single-bay configuration. The incremental material and labor costs to install a second bay will be credited.

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 Malheur 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 Intentionally Left Blank 8.3.3.5 Equipment Bay. Provides mounting space for CLEC collocated equipment in a Cageless Collocation ONLY. This charge includes the seven, nine, or eleven foot bay, its installation, and all necessary environmental supports and end guard costs. Mounting space on the bay, including space for the fuse panel and air gaps necessary for heat dissipation, is limited to seventy-eight (78) inches.

8.3.3.6 Spacers: Provides for cost associated with procuring and installing spacer and associated mounting brackets with the Equipment Bay described in 8.3.3.5 above. Spacer(s) will be procured based on customer requested width and to match existing office environment height.

### **8.3.4 Rate Elements - ICDF Collocation**

8.3.4.1 Rate elements for ICDF Collocation include security, QPF, DS0 circuit legs, DS1 circuit legs, DS3 circuit legs, and fiber circuit legs. Circuit legs are defined as termination blocks/panels and cables that are provisioned to meet CLEC's ICDF Collocation needs. These rate elements and their associated charges are used to develop a price quotation for the ICDF Collocation based on CLEC's Collocation Application.

8.3.5 Intentionally Left Blank

### **8.3.6 Rate Elements – Intentionally Left Blank**

### **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 Intentionally Left Blank**

### **8.3.9 Rate Elements – Splitter Collocation**

8.3.9.1 Tie Cable 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, frame re-stenciling, and any other work performed between CLEC's Collocation and the Interconnection Distribution Frame (ICDF) required to provision UNEs and other services.

8.3.9.2 Trouble Isolation Charge – A Miscellaneous Charge will be applied for trouble isolation in accordance with Maintenance and Repair processes set forth in the Maintenance and Repair Section of this Agreement. Exhibit A includes charges for Trouble isolation.

8.3.9.3 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.

8.3.9.4 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 ICDF, or on the MDF/COSMIC™. These are both recurring and nonrecurring charges.

8.3.9.5 Splitter Charge – A nonrecurring charge will apply for the cost of each Splitter purchased by Qwest on behalf of CLEC. This charge will cover the cost of the Splitter, plus any associated costs incurred by Qwest to order the Splitter.

8.3.9.6 Engineering – A nonrecurring charge will apply for the planning and engineering associated with placing Splitters in the Central Office, either in a bay, on the ICDF, or on the MDF/COSMIC™.

8.3.9.7 Splitter Tie Cable Connections Charge – A nonrecurring charge will apply

for the cost of each tie cable connected to the Splitters in three (3) different configurations: common area; Collocation space; and Main Distribution Frame. This charge will cover both the tie cables and associated blocks per one hundred (100) pair between the Splitter and the ICDF or Splitter bay.

8.3.9.8 The rates for each of the aforementioned split services rate elements are set forth in Exhibit A to this Agreement.

## **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 Malheur.

8.4.1.1.1 Nothing in this Agreement shall be construed to preclude CLEC from submitting an order for Collocation prior to CLEC's execution of this Agreement. If, however, the Collocation interval is completed before this Agreement or another interconnection agreement becomes effective, the rates, terms, and conditions of this Agreement shall apply to such Collocation.

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 Malheur's ability to provision the requested Collocation within the applicable intervals if the changes are provisioned with the original Collocation order and would require Malheur to incur financial penalties under the terms of this Agreement or other Applicable Law. Malheur 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 Malheur 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 Malheur 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 Quotation.

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 Malheur account team. CLEC's 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 Collocation 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 Malheur

Premises, the following:

- a) Identification of the Malheur 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., Cageless Physical, 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 Malheur may not distribute, disclose or reveal, in any form, CLEC forecasts other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2.

8.4.1.5 CLEC shall submit a Collocation Application to order Collocation at a particular Malheur Premises. A Collocation Application shall be considered complete, if it contains:

- a) Identification of the Malheur 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., 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 Collocation Application, how this equipment is necessary for access to UNEs or

Interconnection. A high level equipment interface or connectivity schematic for the equipment should also be included.);

- g) Entrance Facility type;
- h) Type and quantity of terminations;
- i) If desired, an alternate form of Collocation if the 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 Malheur determines that the Collocation Application is not complete, Malheur shall notify CLEC of any deficiencies within ten (10) Days after receipt of the Collocation Application. Malheur 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.1.6 Acceptance – After receipt of a Collocation Quotation Form from Malheur, CLEC shall formally accept the quotation in order for Malheur 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.

8.4.1.7 Collocation Space Reservation – allows CLEC to reserve space and identify, to the extent available, infrastructure incidental to that space such as power and HVAC, in a Malheur Premises for up to one (1) year for transmission equipment (ATM and DSLAM), three (3) years for circuit switching equipment, and five (5) years for power equipment. CLEC may reserve space in a particular Malheur 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, Malheur will provide space feasibility within ten (10) Days.

8.4.1.7.2 Collocation Space Reservation Quotation – If space is available, Malheur will provide the space feasibility and a Billing invoice for the non-refundable \$2,000 (two thousand dollar) Space Reservation Fee within ten (10) Days.

8.4.1.7.2.1 Collocation Space Reservation Acceptance. CLEC must submit the \$2,000 (two thousand dollar) Space Reservation Fee within seven (7) Days of receipt of the Billing invoice. If CLEC submits the Acceptance between eight (8) and thirty (30) Days of receipt of the

Billing invoice, Malheur will honor the reservation upon receipt of the payment only if Malheur does not receive a competing request for the same space from another CLEC. Malheur will not honor reservations if CLEC submits the payment more than thirty (30) Days after receipt of the Billing invoice.

8.4.1.7.3 Upon receipt of the \$2,000 (two thousand dollar) Space Reservation Fee, Malheur will reserve the space on behalf of CLEC in accordance with the Application and take necessary steps to ensure the availability of power, HVAC and other components reflected on the application for reservation. Malheur will hold the reservation for the applicable reservation period after receipt of the nonrefundable \$2,000 (two thousand dollar) payment.

8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. The \$2,000 (two thousand dollar) space reservation fee is non-refundable. The Space Reservation Fee will be applied against the Collocation construction for the specific Premises. Failure to use the reserved space, in the period specified in the Collocation Space Reservation Application based upon Section 8.4.1.7, will result in the forfeiture of the \$2,000 (two thousand dollars).

#### 8.4.1.8 Collocation Space Option

8.4.1.8.1 CLEC, Malheur and Malheur Affiliates may option space in Malheur 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 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. 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:

- four (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 Malheur Premises, the amount of Collocation space sought, the type of Collocation (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 Malheur. Upon receipt of the Collocation Space Option Application form, Malheur will confirm in writing, within ten (10) Days, the availability of, and price quotation (the "Option Fee") for the Optioned space. If space is not available, Malheur will deny the request.

8.4.1.8.4 CLEC must 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) Days of receipt of the quotation. When Malheur takes an option on space for itself, Malheur shall impute an amount equal to the Option Fee to the appropriate operations for which the optioned space applies. The option quotation expires seven (7) 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, Malheur 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 Malheur, 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) 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 quotation from Malheur on CLEC's renewal application.

8.4.1.8.7 First Right of Refusal – If Malheur receives a valid Collocation Application (CLEC A is the requesting party) for a Malheur 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 Malheur out of space reporting requirements apply to the Collocation Application (Sections 8.2.1.11 and 8.2.1.12). In addition, Malheur will provide CLEC A with option space information (e.g., Cageless optioned space) that may fulfill the requirements of CLEC A's Collocation Application. At CLEC A's request, Malheur 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 Malheur is in possession of a valid Collocation Application, and calls for the option party to exercise its Right of First Refusal, or relinquish its 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) 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, Malheur will make its best effort to notify CLEC if Malheur, its Affiliates or other CLECs require the use of CLEC's contiguous space. Upon notification, CLEC will have seven (7) 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) 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 Collocation Application.

8.4.1.9 The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation Applications are submitted by CLEC in a one (1) week period in the state, intervals shall be individually negotiated. Malheur shall, however, accept more than five (5) Collocation Applications from CLEC per week per state, depending on the volume of Collocation Applications pending from other CLECs.

## 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, Malheur 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) Days of receipt of a complete Collocation Application. As part of the feasibility study, Malheur 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 Malheur determines that the Collocation Application is not complete, Malheur shall notify CLEC of any deficiencies within ten (10) Days of the Collocation Application. Malheur 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.2.2 Quotation – If Collocation Entrance Facilities and space are available, Malheur will develop a price quotation within twenty-five (25) Days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of a Collocation 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 quotations will be honored for thirty (30) Days from the date the quotation 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 Malheur will begin.

8.4.2.4 Interval - The interval for Virtual Collocation shall vary depending upon four (4) 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) Days receipt of the quotation; 3) whether CLEC delivers its collocated equipment to Malheur in a timely manner, which shall mean within fifty-three (53) Days of the receipt of the complete Collocation Application; and 4) whether the Collocation Application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Malheur on shorter intervals and in no instance shall any such interval exceed thirty (30) Days. When Malheur is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Malheur 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 a Collocation Application is included in CLEC's forecast at least sixty (60) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days of receipt of the Malheur Collocation quotation, and if all of CLEC's equipment is available at the Malheur Premises no later than fifty-three (53) Days after receipt of the complete Collocation Application, Malheur shall complete its installation of the Collocation arrangement

within ninety (90) Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Malheur within fifty-three (53) Days after receipt of the complete Collocation Application, Malheur shall complete the Collocation installation within forty-five (45) 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, and if all of CLEC's equipment is available at the Malheur Premises no later than fifty-three (53) Days after receipt of the complete Collocation Acceptance, Malheur shall complete its installation of the Collocation arrangement within ninety (90) Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Malheur within fifty-three (53) Days after receipt of the complete Collocation Acceptance, Malheur shall complete the Collocation installation within forty-five (45) Days of the receipt of all of CLEC's equipment. If CLEC submits its Acceptance more than thirty (30) Days after receipt of the Malheur quotation, the Collocation 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days of receipt of the Malheur Collocation quotation, and if all of CLEC's equipment is available at the Malheur Premises no later than fifty-three (53) Days after receipt of the complete Collocation Application, Malheur shall complete its installation of the Collocation arrangement within one hundred and twenty (120) Days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Malheur within fifty-three (53) Days after receipt of the complete Collocation Application, Malheur shall complete the Collocation installation within seventy-five (75) 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, and if all of CLEC's equipment is available at the Malheur Premises no later than fifty-three (53) Days after receipt of the complete Collocation Acceptance, Malheur shall complete its installation of the Collocation arrangement within one hundred and twenty (120) Days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Malheur within fifty-three (53) Days after receipt of the complete Collocation Acceptance, Malheur shall complete the Collocation installation within seventy-five (75) 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 Malheur 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 Malheur Premises no later than fifty-three (53) Days after receipt of the complete Collocation Application, Malheur shall propose to complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) 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 Malheur 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, Malheur 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 not withstanding these efforts, Malheur is unable to meet the interval and cannot reach agreement with CLEC for an extended interval, Malheur may seek a waiver from the Commission to obtain an extended interval.

### **8.4.3 Ordering - Cageless Physical Collocation**

8.4.3.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Malheur 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) Days from date of receipt of a complete Collocation Application. As part of the feasibility study, Malheur 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 Malheur determines that the Collocation Application is not complete, Malheur shall notify CLEC of any deficiencies within ten (10) Days of the Collocation Application. Malheur 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.3.2 Quotation -- If Collocation Entrance Facilities and space are available, Malheur will develop a quotation for the supporting structure. Malheur will complete the quotation no later than twenty-five (25) Days of providing the feasibility study. Physical Collocation price quotations will be honored for thirty (30) Days from the date the quotation 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 Malheur will begin.

8.4.3.4 Interval – The interval for Physical Collocation shall vary depending upon three (3) 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) Days of receipt of the quotation; and 3) whether the Collocation Application requires major infrastructure additions or modifications. When Malheur is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Malheur 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days of receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within ninety (90) 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within ninety (90) Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) Days after receipt of the Malheur quotation, a new Collocation 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within one hundred and twenty (120) 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) Days prior to submission of the Collocation Application and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within one hundred and twenty (120) 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 Malheur 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, Malheur shall propose to

complete its installation of the Collocation arrangement within an interval of no more than one hundred and fifty (150) 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 Malheur 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, Malheur 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, Malheur is unable to meet the interval and cannot reach agreement with CLEC for an extended interval, Malheur 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, Malheur will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's terminations within the Wire Center. The feasibility study will be provided within ten (10) Days from date of receipt of a complete Collocation Application. As part of the feasibility study, Malheur will also notify CLEC of any known circumstance that may delay delivery of the ordered Collocation space and related facilities. CLEC may submit an ICDF forecast in accordance with Section 8.4.1.4. The forecast shall include demand by DS0, DS1 and DS3 capacities that will be terminated on the Interconnection Distribution Frame by Malheur on behalf of CLEC. Such forecasts shall be used by Malheur 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 Malheur Wire Center.

8.4.4.1.1 If Malheur determines that the Collocation Application is not complete, Malheur shall notify CLEC of any deficiencies within ten (10) Days of the Collocation Application. Malheur 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.4.2 Quotation -- If space is available, Malheur will develop a quotation for the supporting structure. Malheur will complete the quotation no later than twenty-five (25) Days of providing the feasibility study. ICDF Collocation price quotations will be honored for thirty (30) Days from the date the quotation 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 Malheur 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) Days of the quotation. When Malheur is permitted to complete a Collocation installation in an interval that is longer than the standard intervals set forth below, Malheur 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days of receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within forty-five (45) 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within forty-five (45) Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) days after receipt of the Malheur quotation, the Collocation 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) Days prior to submission of the Collocation Application, and if CLEC provides a complete Acceptance within seven (7) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within ninety (90) 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 Malheur 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) Days prior to submission of the Collocation Application and if CLEC provides a complete Acceptance more than seven (7) Days but less than thirty (30) Days after receipt of the Malheur Collocation quotation, Malheur shall complete its installation of the Collocation arrangement within ninety (90) 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 Malheur must request a waiver from the Commission.

#### **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). Malheur 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 Malheur Premises, or to another CLEC's equipment in the same Premises. The feasibility study will be provided within ten (10) Days from date of receipt of a complete Collocation Application.

8.4.7.1.1 If Malheur determines that the Collocation Application is not complete, Malheur shall notify CLEC of any deficiencies within ten (10) Days of the Collocation Application. Malheur 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.7.2 Quotation -- If existing cable racking is available, Malheur will provide CLEC with a quotation and the specific cable rack route to CLEC with the feasibility study. If additional cable racking is required to accommodate CLEC's request, Malheur shall provide a feasibility and quotation to CLEC no later than ten (10) Days of receipt of Collocation Application. CLEC-to-CLEC Connection quotations will be honored for thirty (30) Days from the date the quotation 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 Malheur 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, Malheur 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 Malheur shall be within sixty (60) Days of the receipt of the complete Collocation Acceptance. If CLEC submits its Acceptance more than thirty (30) Days after receipt of the Malheur quotation, the Collocation Application shall be resubmitted by CLEC.

## 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) Days from date of receipt of a complete Collocation Application.

8.4.8.1.1 If Qwest determines that the Collocation Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) Days of the Collocation 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 Collocation Application and resubmit the Collocation Application within ten (10) Days after being advised of the deficiencies.

8.4.8.2 Quotation – If existing cable racking is available, Qwest will provide CLEC with a quotation 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 quotation to CLEC no later than ten (10) Days after receipt of a complete Collocation Application. Direct Connection quotations will be honored for thirty (30) Days from the date the quotation 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) 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) 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) Days of the receipt of the complete Collocation Acceptance.

## **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, Malheur will provide CLEC a completion package that will initiate the recurring Collocation charges. Once this completion package has been signed by CLEC and Malheur, and Malheur has received the final fifty percent (50%) balance, Malheur will activate CLEC transport services and/or UNEs or ancillary services coincident with completion of the Collocation.

8.5.1.2 In the event Malheur 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), Malheur 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, Malheur 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 Malheur 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 Malheur approved vendor and follow the designated racking route. Final test and turn-up will be performed under the Maintenance and Repair process contained herein.

### **8.5.2 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 Malheur may be negotiated and performed to ensure continuity and acceptable transmission parameters in the facility and equipment.

### **8.5.3 Billing - 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, Malheur will schedule a walk through of the space with CLEC. During this joint walk through, Malheur will turn over access to the space and provide security access to the Premises. Upon completion of the acceptance walk through, CLEC will be provided the Cageless Physical Collocation completion package (i.e., all ordering information). 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 Malheur, 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) Days of the RFS, Malheur shall activate the monthly recurring charges.

## **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 Malheur or a Malheur authorized vendor.

8.6.1.3 Upon failure of CLEC's virtually collocated equipment, Malheur will promptly notify CLEC of such failure and the corrective action that is needed. Malheur 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 Malheur. CLEC is responsible for transportation and delivery of maintenance spares to Malheur 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**

8.6.3.1 CLEC is responsible for block and jumper inventory and maintenance at the Interconnection Distribution Frame and using industry accepted practices for its terminations. Additionally, CLEC is responsible for having jumper wire and tools for such operations. Malheur 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 Intentionally Left Blank**

### **8.6.5 Intentionally Left Blank**

### **8.6.6 Splitter Collocation**

8.6.6.1 When 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 Splitters. CLEC will leave one (1) unused, spare Splitter

card in every shelf to be used for Maintenance and Repair until such time as the card must be used to fill the shelf to capacity.

8.6.6.2 When 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.

## SECTION 9.0 - UNBUNDLED NETWORK ELEMENTS

### 9.1 General Terms

9.1.1 Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Malheur is required to unbundle and/or provide in a UNE Combination, shall be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Malheur agree that the UNEs identified in Section 9 are not exclusive and that pursuant to changes in FCC rules, the Bona Fide Request Process, or Special Request Process (SRP), CLEC may identify and request that Malheur furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC.

9.1.1.1 UNEs shall only be obtained for the provision of Telecommunications Services, which do not include telecommunications utilized by CLEC for its own administrative use.

9.1.1.2 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

9.1.1.3 If CLEC accesses and uses a UNE consistently with Section 9.1.2, CLEC may provide any Telecommunications Services over the same UNE.

9.1.1.4 Whether a high capacity loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and updating the Commission-Approved Wire Center List. For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List Regarding ordering after any additions to the initial Commission-Approved Wire Center List, see Section 9.1.1.4.3 of this Agreement.

9.1.1.4.1 Malheur shall make the Commission-Approved Wire Center List available to CLEC.

9.1.1.4.2 Upon receiving a request for access to a high capacity loop or high capacity transport UNE, Malheur must immediately process the request. Malheur shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the self-certification letter information through remarks in the service request, or through other means) for any such facility, unless the Parties agree otherwise in an amendment to the Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 9.1.1.4, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.1.4.3. For changes of law, the Parties agree that the change of law provisions contained in the Agreement will apply.

9.1.1.4.3 Additional Non-Impaired Wire Centers. When Malheur files a request(s) to add additional Wire Center(s) to the Commission-Approved Wire Center List, Malheur will follow the procedures for making such requests approved by the Commission in the Wire Center Docket. If the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Malheur and CLEC will work together to identify those circuits impacted by such change.

9.1.1.4.3.1 Length of Transition Period for Additional Non-Impairment Designations.

9.1.1.4.3.1.1 When the Commission approves additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 9.1.1.4.3, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.

9.1.1.4.3.1.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 9.1.1.4.3, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition to an alternative arrangement. Malheur and CLEC will work together to identify those circuits impacted by such a change.

9.1.1.4.3.2 Rate During Transition Period for Additional Non-Impairment Designations.

9.1.1.4.3.2.1 For a ninety (90) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Malheur as of that date, but which Malheur is not obligated to unbundle, shall be available for lease from Malheur at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.1.4.3.2.2 For a one-hundred and eighty (180) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Dedicated Transport UNEs that CLEC leases from Malheur as of that date, but which Malheur is not obligated to unbundle, shall be available for lease from Malheur at a rate equal to to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.1.4.3.2.3 The 115% rate described in Sections 9.1.1.4.3.2.1 and 9.1.1.4.3.2.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

9.1.1.4.3.2.4 For high capacity loops and high capacity transport UNE transitions, Malheur will assess the non-recurring charge contained in the appropriate Tariff. No additional non-recurring charges apply for the transition, other than OSS non-recurring charges if applicable. Malheur shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Malheur to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

9.1.1.4.3.2.4.1 When Malheur's tariff rate exceeds \$25, Malheur will provide a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. This lump sum credit applies for at least three (3) years from the effective date of a Commission order approving the Settlement Agreement in a Wire Center Docket.

9.1.1.4.3.2.4.2 The Parties may disagree as to the amount of the applicable non-recurring charge after the three years period described in 9.1.1.4.3.2.4.1. Each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Agreement precludes a Party from addressing charges after the three years period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties and reflected in an amendment to the Agreement.

9.1.1.4.3.2.5 Methodology: The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

9.1.1.5 If it is determined by CLEC or Malheur that CLEC's access to or use of UNEs is inconsistent with Existing Rules, except due to change of law, CLEC has thirty (30) Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Malheur alternate service arrangements. CLEC is also responsible for all non-recurring charges associated with such conversions.

9.1.1.6 When CLEC submits an order to convert a special access circuit to a UNE and that circuit has previously been exempt from the special access surcharge pursuant to 47 C.F.R. § 69.115, CLEC shall document in its certification when and how the circuit was modified to permit interconnection of the circuit with a local exchange

subscriber line.

9.1.1.7 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Features or functions not offered for resale on a stand-alone basis or separate from basic Exchange Service; and
- d) Network Elements offered pursuant to Section 271.

9.1.1.8 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., switched and special access services offered pursuant to Tariff), and request Malheur 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 Malheur to perform the Commingling of such services. Malheur shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Malheur's network with access services.

9.1.1.8.1 When a UNE and other service are Commingled, the service interval for each facility being Commingled will apply only as long as a unique provisioning process is not required for the UNE or service due to the Commingling. Performance measurements and/or remedies do not apply to the total Commingled arrangement but do apply to each facility or service ordered within the Commingled arrangement. Work performed by Malheur to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Malheur, and Malheur 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.

9.1.1.8.2 Malheur will not combine or Commingle services or Network Elements that are offered by Malheur solely pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

9.1.1.8.3 Services are available for Commingling only in the manner in which they are provided in Malheur's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

9.1.1.8.3.1 Entrance Facilities and mid-span meet SPOI obtained pursuant to Section 7 of this Agreement are not available for Commingling.

9.1.1.9 Ratcheting. To the extent that CLEC requests Malheur to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Malheur pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Malheur will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

9.1.1.9.1 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

9.1.1.10 Service Eligibility Criteria. The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport).

9.1.1.10.1 Except as otherwise provided in this Section 9.1.1.10, Malheur shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

9.1.1.10.2 CLEC must certify that the following Service Eligibility Criteria are satisfied to: (1) convert a special access circuit to a high capacity EEL, (2) to obtain a new high capacity EEL; or (3) to obtain at UNE pricing any portion of a Commingled circuit that includes a high capacity Loop and transport facility or service. Such certification shall be in accordance with all of the following Sections.

9.1.1.10.2.1 State Certification. CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

9.1.1.10.2.2 Per Circuit Criteria. The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

9.1.1.10.2.3 Telephone Number Assignment. Each circuit to be provided to each End User Customer will be assigned a local telephone number prior to the provision of service over that circuit. This requires that each DS1 circuit must have at least one (1) local telephone number and each DS3 circuit has at least twenty-eight (28) local telephone

numbers. The origination and termination of local voice traffic on each local telephone number assigned to a circuit shall not include a toll charge and shall not require dialing special digits beyond those normally required for a local voice call.

9.1.1.10.2.4 911 or E911. Each circuit to be provided to each End User Customer will have 911 or E911 capability prior to the provision of service over that circuit.

9.1.1.10.2.5 Collocation.

a) Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Malheur's Premises within the same LATA as the End User Customer's premises, when Malheur is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location;

b) Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is located at the third party's premises within the same LATA as the End User Customer's premises, when Malheur is the collocator; and

c) When a DS1 or DS3 EEL Loop is connected to a multiplexed facility, the multiplexed facility must be terminated in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Malheur's Premises within the same LATA as the End User Customer's premises, when Malheur is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location.

9.1.1.10.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Where CLEC does not arrange for a meaningful exchange of traffic, those arrangements cannot be attributed toward satisfaction of this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA as the End User Customer served by the circuit. For each twenty-four (24) DS1 circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA as the End User Customer served by the circuit.

9.1.1.10.2.6.1 Calling Party Number. Each circuit to be provided to each End User Customer will be served by an Interconnection trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 LIS trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. If the Calling Party Number is not exchanged over an Interconnection trunk, that trunk shall not be

counted towards meeting these criteria.

9.1.1.10.2.7 End Office Switch. Each circuit to be provided to each End User Customer will be served by an End Office Switch capable of switching local voice traffic. CLEC must certify that the switching equipment is either registered in the LERG as a Class 5 Switch or that it can switch local voice traffic.

9.1.1.10.3 CLEC must provide certification to Malheur through a certification letter, or other mutually agreed upon communication, that each individual high capacity loop in combination, or Commingled, with a Malheur-provided high capacity transport facility or service, meets the Service Eligibility Criteria set forth above before Malheur will provision or convert the high capacity facility in combination or Commingled.

9.1.1.10.4 CLEC's high capacity combination or Commingled facility Service Eligibility shall remain valid only so long as CLEC continues to meet the Service Eligibility Criteria set forth above. If CLEC's Service Eligibility on a given high capacity combination or Commingled facility is no longer valid, CLEC must submit a service order converting the facility to the appropriate private line/special access service within thirty (30) Days.

9.1.1.10.5 Service Eligibility Audits. In order to confirm reasonable compliance with these requirements, Malheur may perform Service Eligibility Audits of CLEC's records. Service Eligibility Audits shall be performed in accordance with the following guidelines:

9.1.1.10.5.1 Malheur may, upon thirty (30) Days written notice to CLEC that has purchased high capacity combination and Commingled facilities, conduct a Service Eligibility Audit to ascertain whether those high capacity facilities were eligible for UNE treatment at the time of Provisioning or conversion and on an ongoing basis thereafter.

9.1.1.10.5.2 CLEC shall make reasonable efforts to cooperate with any Service Eligibility Audit by Malheur and shall maintain and provide Malheur with relevant records (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that CLEC's high capacity combination and Commingled facilities meet the Service Eligibility Criteria.

9.1.1.10.5.3 An independent auditor hired and paid for by Malheur shall perform any Service Eligibility Audits, provided, however, that if a Service Eligibility Audit reveals that CLEC's high capacity combination and Commingled facility circuit(s) do not meet or have not met the Service Eligibility Criteria, then CLEC shall reimburse Malheur for the cost of the audit. To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Criteria, Malheur shall reimburse CLEC for its costs associated with the Service Eligibility Audit.

9.1.1.10.5.4 An independent auditor must perform its evaluation in

accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

9.1.1.10.5.5 Malheur shall not exercise its Service Eligibility Audit rights with respect to CLEC (excluding Affiliates), more than once in any calendar year, unless an audit finds non-compliance. If a Service Eligibility Audit does find non-compliance, Malheur shall not exercise its Service Eligibility Audit rights for sixty (60) Days following that audit, and if any subsequent Service Eligibility Audit does not find non-compliance, then Malheur shall not exercise its Service Eligibility Audit rights for the remainder of the calendar year.

9.1.1.10.5.6 At the same time that Malheur provides notice of a Service Eligibility Audit to CLEC under this paragraph, Malheur shall send a copy of the notice to the Federal Communications Commission.

9.1.1.10.5.7 Service Eligibility Audits conducted by Malheur for the purpose of determining compliance with Service Eligibility Criteria shall not effect or in any way limit any audit or Dispute Resolution rights that Malheur may have pursuant to other provisions of this Agreement.

9.1.1.10.5.8 Malheur shall not use any other audit rights it may have under this Agreement to audit for compliance with the Service Eligibility Criteria of this Section. Malheur shall not require a Service Eligibility Audit as a prior prerequisite to Provisioning combination and Commingled facilities.

9.1.1.10.5.9 CLEC shall maintain appropriate records to support its Service Eligibility Criteria. However, CLEC has no obligation to keep any records that it does not keep in the ordinary course of its business.

9.1.1.10.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits to private line/special access circuits and CLEC must true-up any difference in payments within thirty (30) days.

9.1.2 Malheur 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 Malheur 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 Malheur will be provided in "substantially the same time and manner" to that which Malheur provides to itself or to its Affiliates. In those situations where Malheur does not provide access to Network Elements to itself, Malheur will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Malheur provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the Network Element, except when the provisions herein indicate that a Network Element will be shared. Notwithstanding the foregoing, Malheur 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, Malheur shall comply with all state wholesale service quality requirements.

9.1.2.1 If facilities are not available, Malheur will build facilities dedicated to an End User Customer if Malheur 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, Malheur 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, Malheur will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities 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, Malheur will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, and other routine network modifications as described below) in order to complete facilities to the End User Customer's premises.

9.1.2.1.2.1 Malheur shall make all routine network modifications to unbundled Loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Malheur shall perform these routine network modifications to unbundled Loop or transport facilities in a non-discriminatory fashion, without regard to whether the Loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

9.1.2.1.2.2 A routine network modification is an activity that Malheur regularly undertakes for its own retail End User Customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Malheur ordinarily attaches to a DS1 loop to activate such loop for its own retail End User Customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Malheur will look for existing engineering job orders that could fill the request in the future. If an engineering job currently

exists, Malheur will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Malheur 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, Malheur 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. Malheur 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 For UNEs that do not meet the requirements in Section 9.1.2.1, Malheur will send CLEC a rejection notice canceling the LSR or ASR. Upon receipt of the rejection notice, CLEC may submit a request to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.4 Malheur 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 one hundred thousand dollars (\$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 Malheur does not warrant or guarantee the estimated Ready for Service Dates. CLEC also acknowledges that funded Malheur outside plant engineering jobs may be modified or cancelled at any time.

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9.1.4 Malheur will provide a connection between Unbundled Network Elements and a 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.

9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Malheur will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Malheur provides to itself. Malheur 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 Malheur 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. Malheur will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Malheur shall not in any way restrict CLEC's use of any element or combination of elements (regardless of whether such combination of elements is ordered from Malheur in combination or as elements to be combined by CLEC) except as Malheur may be expressly permitted or required by Existing Rules.

9.1.6 Except as set forth in Section 9.23, the UNE Combinations Section, Malheur provides UNEs on an individual element basis. Charges, if any, for testing pursuant to this paragraph are contained in Exhibit A to this Agreement.

9.1.6.1 When elements are provisioned by Malheur on an individual element basis (whether or not such elements are combined by CLEC with other elements provided by Malheur or CLEC):

- a) Malheur 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) Malheur will repair and maintain such element to ensure that UNE continues 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) Malheur 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 Malheur in combination:

- a) Malheur 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) Malheur will repair and maintain such combination and each UNE included in such combination to ensure that such UNE continues to meet the technical parameters of the combination.
- c) Malheur 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 PCAT, which is located on the Malheur web site.

9.1.9 In order to maintain and modernize the network properly, Malheur 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. Malheur 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 C.F.R. Parts 51 and 52. Malheur provides such disclosures on an Internet web site.

9.1.10 Channel Regeneration. Malheur's design will ensure the cable between the Malheur-provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged for separately for Interconnection between a Collocation space and Malheur's network. Cable distance limitations are based on ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B."

9.1.11 Recurring and nonrecurring charges apply for Unbundled Network Elements, as provided under "Rate Elements" subsections of this Section 9.

9.1.12 Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request or are provided based on CLEC's actions that result in miscellaneous services being provided by Malheur. Miscellaneous Charges are in addition to recurring and nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services provided during Malheur's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such services provided between 5 p.m. and 8 a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays.

a) Additional engineering – engineering work including: 1) additional technical information after Malheur has already provided the technical information normally on the design layout record; 2) customized service; or 3) review of Malheur outside plant records. Basic or overtime rates apply.

b) Additional labor – installation – installation work scheduled to be performed outside of Malheur's regular business hours. Overtime or premium rates apply.

c) Additional labor - other - work not included in "additional labor – installation" above that involves labor only, including testing and maintenance that are not part of initially requested installation or maintenance, or, for example, for Optional Testing when CLEC

reports trouble and provides no test results and authorizes Malheur to perform tests on CLEC's behalf. Basic, overtime, or premium rates apply.

d) Additional cooperative acceptance testing – performing specific tests requested by CLEC. Malheur's participation in such testing is subject to the availability of necessary qualified Malheur personnel and test equipment at test locations, which normally include the Malheur Central Office and may include CLEC's specified location. Tests include, but are not limited to, loop back, attenuation, intermodulation, phase jitter, noise, delay, echo, and frequency shift tests. Basic, overtime, or premium rates apply.

e) Non-scheduled testing - performing specific tests requested by CLEC as described above under "cooperative testing" or "manual testing" on a non-scheduled basis. Tests include, but are not limited to, loss, noise, slope, delay, and echo. Such tests are performed as the result of a repair request and are in addition to tests required to isolate and repair trouble. Basic, overtime, or premium rates apply.

f) Cancellation – cancellation of a pending order for the installation of services at any time prior to notification by Malheur that service is available for use. The cancellation date is the date Malheur receives notice from CLEC that the order is cancelled. If CLEC or CLEC's End User Customer is unable to accept service within thirty (30) Days after the original Due Date, the order will be cancelled by Malheur. Prices for this miscellaneous service are market-based, using Malheur's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change. Additional information concerning the application of prices for cancellations can be found in Malheur's Tariff FCC No. 1, Section 5.

g) Design change – information provided by CLEC or a request from CLEC that results in an engineering review and/or a design change to service on a pending service order, per order, per occurrence. Design changes include, but are not limited to: 1) changes to the address on a pending service order when the new address is in the same Malheur Wire Center as the original address; or 2) conversions from an Unbundled Network Element to a private line/Special Access circuit. In addition to a design change Miscellaneous Charge, an address change may result in the application of an expedite Miscellaneous Charge in order to retain the original Due Date. Prices for this miscellaneous service are market-based, using Malheur's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.

h) Dispatch – 1) information provided by CLEC, or a request from CLEC, in relation to installation of services, resulting in dispatch of a Malheur technician(s) when dispatch is not required for Malheur to complete its installation work; 2) information provided by CLEC resulting in dispatch, or a request from CLEC for dispatch, of a Malheur technician(s) in relation to a repair request where no trouble is found in Malheur's facilities; and 3) a Malheur technician(s) is dispatched and CLEC or CLEC's End User Customer is not available or ready. Prices for this miscellaneous service are market-based, using Malheur's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.

i) Expedite – a Due Date that reflects a shorter service interval than is available in Malheur's Service Interval Guide; or that is a request for an earlier Due Date than has been established on a pending order; or that is required to meet a Due Date on a pending order due to design or other changes submitted by CLEC. Malheur will

accommodate CLEC's request for an expedited installation if it can do so without delaying Due Dates or orders of other CLECs or End User Customers. Charges for expedited installations are in addition to nonrecurring charges for the service ordered. Prices for this miscellaneous service are market-based, using Malheur's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.

j) Maintenance of Service/Trouble Isolation – work performed by Malheur when CLEC reports trouble to Malheur and no trouble is found in Malheur's facilities. CLEC is responsible for payment of charges when the trouble is in equipment or systems provided by a party(ies) other than Malheur. Additionally, when CLEC reports trouble within a quantity of services and circuits, but fails to identify the specific service and circuit experiencing trouble, charges apply for the time spent by Malheur to isolate the trouble. A call-out of Malheur technician at a time not consecutive with that technician's scheduled work period is subject to a minimum charge of four (4) hours. Failure of Malheur personnel to find trouble in Malheur facilities will result in no charge if the trouble is subsequently found in those facilities. Charges apply per Malheur technician, from the time of dispatch until the work is complete. Trouble Isolation Charges (TIC) apply for trouble isolation work on POTS and Maintenance of Service charges apply for trouble isolation work on other services. Dispatch Miscellaneous Charges may apply in addition to Maintenance of Service charges or TIC. Basic, overtime, or premium rates apply. Prices for this miscellaneous service are market-based, using Malheur's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.

9.1.13 Notwithstanding any reference, definition or provision to the contrary, CLEC may provide any technically feasible data or voice Telecommunications Service allowed by law over any Loop or Loop portion of a UNE combination, including without limitation, "voice" services over high frequency portions of any Loop or "data" services over any low frequency portion of any Loop, provided such services do not interfere with "voiceband" or "data band" transmission parameters in accordance with FCC rules as more particularly described in this Agreement. Any related equipment provided by CLEC to deliver Telecommunications Services contemplated by this section must comply with appropriate ANSI standards such as T1.417 and T1.413. Other references to the voice or voice band portion of the Loop in this Agreement will mean the low frequency portion of the Loop.

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9.1.15 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Malheur's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates.

9.1.15.1 CLEC will request an expedite for designed Unbundled Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.

9.1.15.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Malheur's Product Catalog for expedites at Malheur's wholesale web site.

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## 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 Malheur 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, attached electronics that are necessary for the full functionality of the loop (except those electronics used for the provision of Advanced Services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The Unbundled Loop includes DS0, DS1, and DS3 Loops.

9.2.1.1 Loop Demarcation Point – For purposes of this Section, Loop Demarcation Point is the point where Malheur owned or controlled facilities cease, and CLEC, End User Customer, owner or landlord ownership of facilities begins.

9.2.1.2 FTTH and FTTC 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, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's premises.

9.2.1.2.1 FTTH/FTTC New Builds. Malheur shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Malheur 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/FTTC Overbuilds. Malheur shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Malheur deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Malheur deploys a FTTH/FTTC loop parallel to, or in replacement of, an existing copper loop facility:

9.2.1.2.2.1 Malheur shall: (i) leave the existing copper loop connected to the End User Customer's premises after deploying the FTTH/FTTC loop to such premises, and (ii) upon request provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Malheur 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 Malheur shall restore such copper loop to serviceable condition on an Individual Case Basis. Any such restoration

shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Malheur's obligations under this subsection 9.2.1.2.2 shall terminate when Malheur retires such copper Loop in accordance with the provisions of Section 9.2.1.2.3 below.

9.2.1.2.2 In the event Malheur, 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, Malheur shall provide access, as an Unbundled Network Element, over the FTTH/FTTC 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/FTTC Loops. In the event Malheur decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Malheur will: (i) provide notice of such planned replacement on its web site ([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 to the FCC. Such notices shall be in addition to any applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90<sup>th</sup>) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) CLEC objection to a Malheur notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Malheur no later than the ninth (9<sup>th</sup>) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

9.2.1.3 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.

9.2.1.3.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, but not DSL, Malheur shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Malheur's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

9.2.1.3.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Malheur may either:

- a) Provide non-discriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or
- b) Provide non-discriminatory access to a spare home-run copper

loop serving that End User Customer on an unbundled basis.

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## 9.2.2 Terms and Conditions

9.2.2.1 Malheur 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 Malheur uses to provide service to its own End User Customers. For Unbundled Loops that have a retail analogue, Malheur will provide these Unbundled Loops in substantially the same time and manner as Malheur provides to its own End User Customers. 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 Malheur assures that 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.

9.2.2.1.2 Use of the word "compatible" to describe Loops in Section 9.2 means 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. Malheur makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer Premises Equipment.

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.

9.2.2.2.1 If Malheur uses Integrated Digital Loop Carrier (IDLC) systems to provide the Unbundled Loop, Malheur 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, Malheur 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, Malheur will make every feasible effort to provision Unbundled Loops over the IDLC in order to provide the Unbundled Loop for CLEC.

9.2.2.2.1.1 In areas where Malheur has deployed amounts of IDLC that are sufficient to cause reasonable concern about CLEC's ability to provide service through available copper facilities on a broad scale, CLEC shall have the ability to gain access to Malheur information sufficient to provide CLEC with a reasonably complete identification of such available copper facilities. Malheur shall be entitled to mediate access in a manner reasonably related to the need to protect Confidential or Proprietary Information. CLEC shall be responsible for Malheur's

incremental costs to provide such information or access mediation.

9.2.2.2.2 If there are state service quality rules in effect at the time CLEC requests an Analog Unbundled Loop, Malheur will provide an Analog Unbundled Loop that meets the state technical standards. If necessary to meet the state standards, Malheur will, at no cost to CLEC, remove load coils and 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 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. Malheur will provision digital Loops in a non-discriminatory manner, using the same facilities assignment processes that Malheur 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, then CLEC shall be charged for such conditioning as set forth in Exhibit A if it authorized Malheur to perform such conditioning.

9.2.2.3.1 Intentionally Left Blank.

9.2.2.3.1.1 DS1 Unbundled Loops. Subject to the cap described in Section 9.2.2.3.1.1.1, Malheur shall provide CLEC with non-discriminatory access to a DS1 Loop on an unbundled basis to any building not served by a Wire Center with at least 60,000 Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 Loop unbundling will be required in that Wire Center.

9.2.2.3.1.1.1 Cap on Unbundled DS1 Loop Circuits. CLEC may obtain a maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

9.2.2.3.1.2 DS3 Unbundled Loops. Subject to the cap described in Section 9.2.2.3.1.2.1, Malheur shall provide CLEC with non-discriminatory access to a DS3 Loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

9.2.2.3.1.2.1 Cap on Unbundled DS3 Loop Circuits. CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled Loops.

9.2.2.3.2 If CLEC orders a 2/4 wire non-loaded Unbundled Loop for an End User Customer served by a digital loop carrier system, Malheur will conduct an assignment process which considers the potential for an LST or alternative

copper facility. If no copper facility capable of supporting the requested service is available, then Malheur will reject the order.

9.2.2.4 Non-Loaded Loops. CLEC may request that Malheur provide a non-loaded Unbundled Loop. In the event that no such facilities are available, CLEC may request that Malheur condition existing spare facilities. CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary. If CLEC has not pre-approved conditioning, Malheur 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, Malheur will dispatch a technician to condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded 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 If CLEC's End User Customer, for which CLEC has ordered x-DSL capable Unbundled Loops from Malheur (i) never receives x-DSL service from CLEC, (ii) suffers unreasonable delay in Provisioning, or (iii) experiences poor quality of service, in any case due to Malheur's fault, Malheur shall refund or credit to CLEC the conditioning charges associated with the service requested. This refund or credit is in addition to any other remedy available to CLEC.

9.2.2.5 When CLEC requests a Basic Rate ISDN capable or an xDSL-I capable Loop, Malheur 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, and 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, it will be added by Malheur, at no charge. Extension Technology can also be requested by CLEC to meet its specific needs. If Extension Technology is requested by CLEC, but is not required to meet the technical standards, then Malheur will provide the requested Extension Technology and will charge CLEC. Malheur will provision ISDN (BRI) capable and xDSL-I capable Loops using the specifications in the Technical Publication 77384. Refer to that document for more information. 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).

9.2.2.6 For DS1 or DS3 capable Loops, Malheur will provide the necessary electronics at both ends, including any intermediate repeaters. 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 Malheur serving Central Office and the network interface at the End User Customer 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).

9.2.2.6.2 DS3 capable Loops provide a transmission path between a Malheur Central Office network interface and an equivalent network interface at an End User Customer 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 Malheur is not obligated to provision BRI-ISDN, xDSL-I-capable, DS1 or DS3-capable Loops to End User Customers in areas served exclusively by Loop facilities or transmission equipment that are not compatible with the requested service.

9.2.2.8 Loop Qualification Tools. Malheur offers five (5) Loop qualification tools: the 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 Malheur develops will provide CLEC access to Loop qualification information in a nondiscriminatory manner and will provide CLEC the same Loop qualification information available to Malheur. CLEC may request an audit of Malheur's company records, back office systems and databases pertaining to Loop information pursuant to Section 18 of this Agreement.

9.2.2.8.1 Loop Qualification Tool. CLEC may use the Loop Qualification tool to pre-qualify the requested circuit utilizing the existing telephone number or address to determine whether it meets DSL specifications. The qualification process screens the circuit for compliance with the design requirements specified in Technical Publication 77399.

9.2.2.8.2 Raw Loop Data Tools. Malheur 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 [www.ecom.qwest.com](http://www.ecom.qwest.com). 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. 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 CLEC through IMA-GUI or IMA-EDI. This tool informs CLEC whether the facility is copper or pair gain and whether there are load coils on the Loop.

9.2.2.8.4 DSL Qualification Tool. The DSL Qualification Tool is available to CLEC through IMA-GUI or IMA-EDI. This tool provides a "yes/no" answer regarding the Loop's ability to support Malheur DSL service. If the DSL 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 CLEC 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 Malheur with the basis for CLEC's belief that the information is inaccurate, then CLEC may request, and Malheur will perform a manual search of the company's records, back office systems and databases where Loop information resides. Malheur will provide CLEC, via email, the Loop information identified during the manual search within forty-eight (48) hours of Malheur's receipt of CLEC's request for manual search. The email will contain the following Loop makeup 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, and wire gauge. 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 End User Customer, including any spare facilities not connected to the Switch and Loop makeup for such spare facilities. After completion of the investigation, Malheur will load the information into the Loop Facilities Assignment and Control System (LFACS) database, which will populate this Loop information into the fields in the Loop qualification tools.

9.2.2.9 Provisioning Options. The following 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, Qwest Interconnection Service – Unbundled Loop.

9.2.2.9.1 Basic Installation. Basic Installation may be ordered for new or existing Unbundled Loops. Upon completion, Malheur will call CLEC to notify CLEC that the Malheur work has been completed.

9.2.2.9.1.1 For an existing End User Customer, 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 Customer 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, Malheur provides a Quick Loop with or without Local Number

Portability (LNP) option, that enables CLEC to receive the Quick Loop installation interval as set forth in Exhibit C. Quick Loop installation without LNP includes only a simple lift and lay procedure. Quick Loop with LNP installation provides a lift and lay, and the LNP functions. 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 Customer, 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 Malheur 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 Customer service, the Basic Installation with Performance Testing option requires a dispatch to the End User Customer 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 Malheur Implementor/Tester on close-out. Within two (2) business days, Malheur 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 CLEC's designated Appointment Time, the Malheur 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 Malheur is not ready within thirty (30) minutes of the scheduled Appointment Time, Malheur will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Malheur fails to perform cooperative testing due to Malheur's fault, Malheur 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, Malheur will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.3.1 For an existing End User Customer, 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 Malheur performance testing, the Malheur Implementor/Tester will contact CLEC, read the Malheur test results, and begin CLEC cooperative testing. Within two (2) business days, Malheur will email the Malheur 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 Customer service, Coordinated Installation With Cooperative Testing may require a dispatch of a technician to the End User Customer 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 Malheur performance testing, the Malheur Implementor/Tester will contact CLEC, read the Malheur test results, and begin CLEC cooperative testing. Within two (2) business days, Malheur will email the Malheur test results to a single, designated CLEC office email address. CLEC will be charged for any Provisioning test not defined in the Malheur Technical Publication 77384.

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 CLEC's designated Appointment Time, the Malheur 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 Malheur is not ready within thirty (30) minutes of the scheduled Appointment Time, Malheur 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, Malheur 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 Malheur Implementor advises CLEC when the "lift and lay" procedure is complete.

9.2.2.9.4.2 For new Unbundled Loops, Malheur may dispatch a technician to terminate the new circuit at the End User Customer 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, Malheur 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 Customer, 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 Malheur performance testing, the Malheur Implementor/Tester will contact CLEC, read the Malheur test results, and begin CLEC cooperative testing. Within two (2) business days, Malheur will email the Malheur test results to a single, designated CLEC office email address. CLEC and Malheur will perform a loop back acceptance test, accept the Loop and exchange demarcation information.

9.2.2.9.5.2 For new End User Customer service, Basic Installation With Cooperative Testing may require a dispatch to the End User Customer 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.

9.2.2.9.5.3 If Malheur fails to perform cooperative testing due to Malheur's fault, Malheur 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, Malheur will issue a jeopardy notice and a FOC with a new Due Date.

9.2.2.9.6 Performance Testing. Malheur performs the following performance tests for various Loop types:

a) 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

b) 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

c) 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

d) DS1-Capable Loops

No Load Coils, Opens, Grounds, Shorts, or Foreign Volts

e) DS3-Capable Loops

Continuity Testing

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 Malheur and CLEC. All requests will be processed on a first come, first served basis and are subject to Malheur'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 Frame Due Time (FDT) in the same Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Malheur 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 Malheur's standard installation hours or out of hours. Malheur standard installation hours for Unbundled Loops are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, excluding holidays. Where LNP is included, see Section 10.2.5.4 for rate elements.

9.2.2.9.7.4 Malheur will schedule the appropriate number of employees prior to the cut, normally not to exceed four (4) 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 to change the Due Date, within twenty-four (24) hours of the negotiated FDT, CLEC will be charged a one (1) Person three (3) hour minimum charge. For Project Coordinated Installations

with LNP, if the Coordinated Installation is cancelled due to a Malheur error or a new Due Date is requested by Malheur, within twenty-four (24) hours of the negotiated FDT, Malheur may be charged by CLEC one (1) Person three (3) hour minimum charge.

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 Malheur agree to isolate and fix the problem in a timeframe acceptable to CLEC or the End User Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the End User Customer, CLEC may request the restoration of Malheur service for the ported End User Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Malheur. If Malheur 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, Malheur 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 Customer.

9.2.2.10 CLEC may request Malheur to Commingle DS1 or DS0 analog voice grade unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Malheur's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 9.25 of this Agreement.

9.2.2.11 In order to properly maintain and modernize the network, Malheur 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 Customer (or its respective agent) and CLEC regarding the disconnection or Provisioning of Unbundled Loops, Malheur will advise the End User Customer to contact CLEC, and Malheur will initiate contact with CLEC.

9.2.2.13 Facilities and lines Malheur furnishes on the premises of CLEC's End User Customer up to and including the Loop Demarcation Point are the property of Malheur. Malheur shall have reasonable access to all such facilities for network management purposes. Malheur 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 Malheur'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 Malheur'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 Intentionally Left Blank.

### 9.2.2.15 Reuse of Loop Facilities

9.2.2.15.1 When an End User Customer contacts Malheur with a request to convert their local service from CLEC to Malheur, Malheur will notify CLEC of the loss of the End User Customer, and will disconnect the Loop Malheur provided to CLEC. Malheur will disconnect the Loop only where Malheur has obtained proper Proof of Authorization.

9.2.2.15.2 When CLEC contacts Malheur with a request to convert an End User Customer from their Current Service Provider to CLEC, CLEC is responsible for notifying the Current Service Provider of the conversion. Malheur will disconnect the Loop Malheur provided the Current Service Provider and, at CLEC's request, where technically compatible, will reuse the Loop for the service requested by CLEC (e.g., resale service).

9.2.2.15.3 When CLEC contacts Malheur with a request to convert an End User Customer from Malheur to CLEC, at CLEC request, Malheur 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, Malheur 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, Malheur will send a Loss Notification report to the original competitive Carrier signifying completion of the loss.

9.2.2.16 Lack of Facilities; Priority Right to Facilities. In the event Malheur notifies CLEC that facilities ordered are not available from Malheur at the time of the order, Malheur 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, Malheur shall notify CLEC of such availability. CLEC and Malheur acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any facility orders placed by any other provider, including Malheur, which predate CLEC's order shall have priority for any facilities made available under the terms of this section.

### 9.2.3 Rate Elements

The following recurring and nonrecurring rates for Unbundled Loops are set forth in Exhibit A. Recurring charges vary based on CLEC selected installation options, conditioning, and extension technology. Exhibit A also provides Miscellaneous Charges.

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 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 for 2/4 wire non-loaded Loops, Basic Rate (BRI) ISDN and xDSL-I Capable Loop, as requested and approved by CLEC.

9.2.3.6 All miscellaneous services as described in Section 9.1.12 are available with Unbundled Loops. Miscellaneous Charges apply for miscellaneous services.

9.2.3.7 Miscellaneous Charges for Out of Hours Coordinated Installations.

9.2.3.7.1 Intentionally Left Blank.

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 labor – installation Miscellaneous Charges in addition to regular nonrecurring charges for the installation.

9.2.3.8 Conversions of private line/special access circuits to Unbundled Loops.

## **9.2.4 Ordering Process**

9.2.4.1 Unbundled Loops are ordered via an LSR. Ordering processes are contained in the Operational Support Systems Section of this Agreement. Detailed ordering processes are found on the Malheur wholesale web site.

9.2.4.2 Prior to placing orders on behalf of the End User Customer, 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 can 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, ISDN capable Loop or xDSL-I capable Loop, CLEC should use one of Malheur'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.

9.2.4.3.1.1 Based on the Loop make up information provided through Malheur tools, CLEC must determine whether conditioning is required to provide the xDSL service it intends to offer. If Loop conditioning is required, CLEC may authorize Malheur to perform such Loop conditioning on its LSR. If CLEC does not pre-approve Loop conditioning, Malheur will assume that CLEC has determined that Loop conditioning is not necessary to provide the xDSL service CLEC seeks to offer. If CLEC or Malheur determines that conditioning is necessary, and

CLEC authorizes Malheur to perform the conditioning, Malheur will perform the conditioning. CLEC will be charged for the conditioning in accordance with the rates in Exhibit A. If Malheur determines that conditioning is necessary and CLEC has not previously authorized Malheur to perform the conditioning on the LSR, Malheur 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 Malheur 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, ISDN-capable Loop, and xDSL-I-capable Loop, or DS1-capable Loop, Malheur 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 Malheur has identified a Loop assignment. Such FOC will provide CLEC with a firm Due Date commitment or indication that appropriate facilities are not available to fill CLEC's order.

9.2.4.3.1.2.1 If CLEC has pre-approved Loop conditioning, and conditioning is not necessary, Malheur will return the FOC with the standard interval (i.e., five (5) days).

9.2.4.3.1.2.2 If CLEC has not pre-approved Loop conditioning and Malheur determines that the Loop contains load coils, Malheur 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 the date the new version is received by Malheur.

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9.2.4.3.1.2.4 Intentionally Left Blank.

9.2.4.4 Installation intervals for all Unbundled Loops are defined in Exhibit C. The interval will start when Malheur 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 Malheur that is complete and accurate, Malheur 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 Malheur will provision the Loop. Malheur will implement adequate processes and procedures to assure the accuracy of the commitment date. If Malheur must make changes to the commitment date, Malheur will promptly issue a jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Malheur 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 Malheur has facilities or network capacity available.

9.2.4.6 Upon CLEC request, Malheur will convert special access or private line circuits to Unbundled Loops provided the service originates at CLEC's Collocation in the Serving Wire Center. The Loop conversion ordering process applies.

9.2.4.7 Intentionally Left Blank.

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 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 Malheur 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, Malheur's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, excluding holidays. CLEC may request an out of hours Coordinated Installation outside of Malheur's standard installation hours. Installations requested outside of standard installation hours are considered to be out of hours Installations.

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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 Malheur 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 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 the Unbundled Loop and any associated ancillary services prior to reporting trouble to Malheur. CLEC shall have access for testing purposes at the NID or Loop Demarcation Point. Malheur will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Malheur's network. Malheur 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 9.2.5.2 and 9.2.5.3.

9.2.5.2 When CLEC requests that Malheur perform trouble isolation with CLEC, a Maintenance of Service charge applies if the trouble is found to be on CLEC's side or on the End User Customer's side of the Loop Demarcation Point. If the trouble is on the End User Customer's side of the Loop Demarcation Point, CLEC is required to perform its own maintenance.

9.2.5.3 Before submitting a repair request to Malheur, CLEC will isolate trouble to the Malheur network and must submit test results indicating the location of the trouble when submitting the repair request. If a trouble ticket with test results is accepted by Malheur, and Malheur determines that the trouble is on CLEC's or the End User Customer's side of the Loop Demarcation Point, a Maintenance of Service charge applies. If CLEC elects not to perform trouble isolation and Malheur performs tests on the Unbundled Loop at CLEC's request, a Maintenance of Service charge applies. Maintenance and Repair processes are set forth in Section 12.3 of this Agreement.

9.2.5.4 Malheur 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. Malheur will conduct a quarterly root cause analysis of problems associated with Loops provided to CLEC by Malheur. Based on this analysis, Malheur will take corrective measure to fix persistent and recurrent problems, reporting to CLEC on the analysis and the process changes that are instituted implemented to fix the problems.

9.2.5.5 Malheur 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 Malheur 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 Malheur will provide 2/4 Wire non-loaded 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 Customers. 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 Malheur with appropriate information using NC/NCI codes to describe the Power Spectral Density Mask (PSD) for the type of technology CLEC will deploy. CLEC also agrees to notify Malheur of any

change in Advanced Services technology that results in a change in spectrum management class on the xDSL Loop. Malheur 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.

9.2.6.2.1 CLEC information provided to Malheur pursuant to Section 9.2.6.2 shall be deemed Confidential Information and Malheur 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 Malheur'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, Malheur and CLEC agree to work cooperatively to determine Spectrum Compatibility. Malheur 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 Malheur recognizes that the analog T1 service traditionally used within its network is a "known Disturber" as designated by the FCC. Malheur 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, Malheur shall, whenever it is Technically Feasible, replace its T1s with a technology that will eliminate undue interference problems. Malheur 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 Malheur 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, Malheur 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, Malheur, 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.

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9.2.6.8 Malheur will not have the authority to unilaterally resolve any dispute over spectral interference among Carriers. Malheur shall not disconnect Carrier services to resolve a spectral interference dispute, except when voluntarily undertaken by the

interfering Carrier or Malheur 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.

9.2.7 Private line/special access circuits may be converted to Unbundled Loops subject to the terms and conditions of this Agreement, including the following criteria: 1) must be like-for-like facilities, e.g., DS1 private line to DS1 capable Unbundled Loop; 2) must originate at CLEC's Collocation site in the serving Central Office; and 3) must terminate at an End User Customer's premises. The provisioning intervals for converting from private line/special access to Unbundled Loop are located in the Service Interval Guide (SIG). Additional information can be found in the Product Catalog for Unbundled Loop.

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## **9.5 Network Interface Device (NID)**

### **9.5.1 Description**

The Malheur NID is defined as any means of Interconnection of on-premises wiring and Malheur'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 only a NID it may only do so pursuant to this Section 9.5. Malheur shall permit CLEC to connect its own Loop facilities to on-premises wiring through Malheur'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 End User Customer's premises wiring, including access to the Cross Connection field, regardless of the particular design of the NID mechanism. Although the NID provides the connection to the End User Customer's premises wiring, it may not represent the Demarcation Point where Malheur ownership or control of the intra-premises wiring ends. The NID contains a protective ground connection that protects the End User 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 Malheur's NID, as well as any on premises wiring that Malheur owns or controls, will remain in place and continue to carry the signal over the End User Customer's on-premises wiring to the End User Customer's equipment. Notwithstanding the foregoing, an Unbundled Loop 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 Customer'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 Malheur 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 Malheur or any other provider, Malheur shall

provide unbundled access to such devices. Malheur shall also continue to allow CLEC, at its option, to use all features and functionality of the Malheur 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.

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## 9.5.2 Terms and Conditions

9.5.2.1 CLEC may use the existing Malheur 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 Malheur NID by placing a cross connect between the two. When Provisioning a NID-to-NID connection, CLEC will isolate the Malheur facility in the NID by unplugging the modular unit. If CLEC requires that a non-modular unit be replaced with a modular NID, Malheur will perform the replacement for the charge described in Section 9.5.3.1. If CLEC is a facilities-based provider up to and including its NID, the Malheur facility currently in place, including the NID, will remain in place.

9.5.2.1.1 Malheur 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 Malheur, without restriction. Where Malheur 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 Malheur shall allow CLEC to use all features and functionality of the Malheur 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. Future installation of Malheur NIDs will be such that it will not unnecessarily impede access to the End User Customer's wiring.

9.5.2.1.4 CLEC may enter the subscriber access chamber or End User Customer side of a dual chamber NID enclosure for the purpose of NID-to-NID connections.

9.5.2.1.5 Upon CLEC request, Malheur 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 Malheur initiates the rearrangement of such terminations. In all such instances, rearrangements shall be performed in a non-discriminatory fashion and timeframe and without an End

User Customer's perceivable disruption in service. Malheur 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 Malheur will retain sole ownership of the Malheur NID and its contents on Malheur's side. Malheur is not required to proactively conduct NID change-outs, on a wide scale basis. At CLEC's request, Malheur 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. Malheur is not required to inventory NID locations on behalf of CLEC.

9.5.2.3 When CLEC accesses a Malheur 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 Malheur 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. Malheur shall label its terminals when a technician is dispatched.

9.5.2.4 All services fed through a protector field in a Malheur NID located inside a building will interface on an industry standard termination block and then extend, via a Cross Connection to the End User Customer's in-premises wiring. All services fed through a protector field in a Malheur 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 End User Customer's on-premises wiring.

9.5.2.5 If so requested by CLEC, Malheur shall allow CLEC to connect its Loops directly to the protector field at Malheur NIDs that have unused protectors and are not used by Malheur or any other Telecommunications Carrier to provide service to the premises. If CLEC accesses the Malheur 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 Malheur 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 Malheur 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.

### **9.5.3 Rate Elements**

Exhibit A provides recurring and nonrecurring rates for access or modifications to an existing NID, and Exhibit A also provides Miscellaneous Charges.

9.5.3.1 If CLEC requests the current simple NID be replaced with a different simple NID, pursuant to Section 9.5.2.1, additional labor – other Miscellaneous Charges will be assessed 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 apply for unbundled access to the protector field in a Malheur NID, pursuant to Section 9.5.2.5. As of the Effective Date of this Agreement, Malheur 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 CLEC requests that Malheur perform the work to connect its NID to the Malheur NID, the costs associated with Malheur performing such work will be charged to CLEC as additional labor – other Miscellaneous Charges.

9.5.3.4 When Malheur makes rearrangements to the inside wire terminations or terminal enclosure pursuant to Section 9.5.2.1.5, charges will be assessed as additional labor – other Miscellaneous Charges.

9.5.3.5 CLEC will be charged for any change-out Malheur performs pursuant to Section 9.5.2.2. CLEC will be billed only for the portion of the change-out that is specific to CLEC's request for modified/additional capacity. Charges will be assessed as additional labor – other Miscellaneous Charges.

#### **9.5.4 Ordering Process**

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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 Section 9.3. If the terminal is a NID and CLEC wishes to access the End User Customer field of the NID, no additional verification is needed by Malheur. CLEC shall tag its jumper wire.

9.5.4.2.1 When CLEC seeks to connect to a cross connect field other than to the End User Customer field of the NID, CLEC shall submit a LSR for connection to the NID. Malheur shall notify CLEC, within ten (10) business days, if the connection is not Technically Feasible. In such cases, Malheur shall inform CLEC of the basis for its claim of technical infeasibility and, at the same time, identify all alternative points of connection that Malheur 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 Malheur and CLEC shall tag its jumper wire.

9.5.4.3 Subject to the terms of Section 9.5.4.2, CLEC may perform a NID-to-NID connection, according to Section 9.5.2.3, and access the End User Customer field of the NID without notice to Malheur. CLEC may access the protector field of the NID by submitting a LSR.

#### **9.5.5 Maintenance and Repair**

9.5.5.1 If Malheur is dispatched to an End User Customer's location on a maintenance issue and finds the NID to be defective, Malheur 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. This work is billed to CLEC as additional labor – other Miscellaneous Charges. Maintenance and Repair processes are contained in the Access to OSS Section of this Agreement.

## 9.6 Unbundled Dedicated Interoffice Transport (UDIT)

Malheur shall provide access to Unbundled Dedicated Interoffice Transport (UDIT) in a non-discriminatory manner according to the following terms and conditions.

### 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 Malheur Wire Centers in the same LATA and state. UDIT provides a path between one (1) CLEC's Collocation in one (1) Malheur Wire Center and a different CLEC's Collocation in another Malheur Wire Center. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Malheur 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 Intentionally Left Blank.

9.6.1.3 Intentionally Left Blank.

### 9.6.2 Terms and Conditions

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9.6.2.0.1 Malheur shall unbundle DS1 transport between any pair of Malheur Wire Centers except where, through application of "Tier" classifications, as defined in Section 4 of this Agreement, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Malheur must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

9.6.2.0.1.1 On Routes for which no unbundling obligation for DS3 dedicated transport circuits exists but for which DS1 Dedicated Transport is available on an unbundled basis, CLEC may obtain a maximum of ten (10) unbundled DS1 Dedicated Transport circuits.

9.6.2.0.2 Malheur shall unbundle DS3 transport between any pair of Malheur Wire Centers except where, through application of "Tier" classifications, as defined in Section 4 of this Agreement, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Malheur must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

9.6.2.0.2.1 CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated

9.6.2.0.3 Intentionally Left Blank

9.6.2.0.4 All services provided in this Section 9.6 are subject to the Ratcheting criteria as provided in Section 9.1.1.9 of this Agreement.

9.6.2.0.5 All services provided in this Section 9.6, when combined with high capacity Loops, are subject to the Service Eligibility Criteria as provided in Section 9.1.1.10 of this Agreement.

9.6.2.1 To the extent that CLEC is ordering access to a UNE Combination, and Cross Connections are necessary to combine UNEs, Malheur 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. 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 UDIT element from one point to another.

9.6.2.2 Intentionally Left Blank.

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. Malheur's design will ensure the cable between the Malheur-provided active elements and the DSX will meet the proper signal level requirements. Channel regeneration will not be charged for separately for Interconnection between a Collocation space and Malheur's network. Cable distance limitations are based on ANSI Standard T1.102.1993 "Digital Hierarchy – Electrical Interface; Annex B."

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9.6.2.9 Upon CLEC request, Malheur will convert special access or private line circuits to UDIT, provided the service originates at CLEC's Collocation in the Serving Wire Center.

### 9.6.3 Rate Elements

Exhibit A provides recurring and nonrecurring rates for UDIT and also provides Miscellaneous Charges.

9.6.3.1 DS1 UDIT includes the following rate 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 Malheur 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 Malheur Wire Centers. c) Intentionally Left Blank.

d) DS1 Nonrecurring Charge. One-time charges apply for a specific work activity associated with installation of the DS1 service.

e) Intentionally Left Blank.

9.6.3.2 DS3 UDIT rates include the following rate 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 Malheur 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 Malheur 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 includes the following rate elements:

a) DS0 Transport Termination (Fixed). 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). This recurring rate element provides a transmission path of 64 Kbps between Malheur 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 Malheur Wire Centers.

c) DS0 Nonrecurring Charges. One-time charges apply for a specific work activity associated with installation of the DS0 service.

d) Low Side Channelization. Recurring charges apply for low side multiplexed channel cards and settings at each end of the DS0 UDIT.

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9.6.3.5.1 Intentionally Left Blank.

9.6.3.6 Nonrecurring charges apply for rearrangements of UDIT.

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9.6.3.8 Intentionally Left Blank.

9.6.3.9 The following miscellaneous services, as described in Section 9.1.12, are available with UDIT. Miscellaneous Charges apply for miscellaneous services.

- a) Additional labor – other
- b) Cancellation
- c) Design Change
- d) Dispatch
- e) Expedite
- f) Maintenance of Service.

9.6.3.10 A nonrecurring charge is applied to the conversion of an existing private line/Special Access circuit to UDIT.

#### **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 Intentionally Left Blank.

9.6.4.1.3 The interval will start when Malheur receives a complete and accurate 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 Intentionally Left Blank.

9.6.4.1.5 An order may be canceled any time up to and including the Due Date/Service Date. Cancellation Miscellaneous Charges apply for such cancellations except when:

- a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Malheur 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. Malheur will install the UDIT extending connections to CLEC Demarcation Point and will notify CLEC when the work activity is complete.

9.6.4.3 Intentionally Left Blank.

9.6.4.4 Intentionally Left Blank.

9.6.4.5 Malheur will perform industry standard tests, set forth in Technical Publication 77389, when installing UDIT service.

9.6.4.6 To convert an existing private line/special access circuit to UDIT, CLEC must submit two (2) ASRs to change the circuit identification, Network Channel Interface Code (NCI) and billing.

9.6.4.7 CLEC will submit an Access Service Request (ASR) for rearrangement including appropriate termination information (e.g., Connecting Facility Assignment (CFA) or Network Channel Codes/Network Channel Interface Codes (NC/NCI) codes).

## **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 Malheur Cross Connections will be repaired by Malheur. Maintenance and Repair processes are contained in the Access to OSS 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**

Dedicated dark fiber shall be made available to CLEC on an unbundled basis as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

### **9.7.1 Description**

Unbundled Dark Fiber (UDF) is a deployed, unlit strand or strands of fiber that connects two (2) Wire Centers within Malheur's network within the same LATA or state. UDF exists in two (2) distinct forms: (a) UDF interoffice facility (UDF-IOF), which constitutes a deployed route between two (2) Malheur Wire Centers; and (b) UDF MTE Subloop that begins at or near an MTE premises to provide access to MTE premises wiring. Deployed Dark Fiber facilities shall include all local exchange Dark Fiber Malheur owns directly or to which it has a right to access under agreements with any other party affiliated or not, that do not prohibit Malheur's ability to provide access to another Person or entity. Deployed Dark Fiber facilities shall not be limited to facilities owned by Malheur, but will include in place and easily called into service facilities to which Malheur has otherwise obtained a right of access, including but not limited to capitalized Indefeasible Right to Use (IRUs) or capitalized leases. Malheur shall not be required to extend access in a manner that is inconsistent with the restrictions and other terms and conditions that apply to Malheur's access; however, in the case of access obtained from an Affiliate: (a) the actual practice and custom as between Malheur and the Affiliate shall apply, in the event that it provides broader access than does any documented agreement that may exist, and (b) any terms restricting access by CLEC that are imposed by the agreement with the Affiliate (excluding good-faith restrictions imposed by any agreement with a third party from whom the Affiliate has gained rights of access) shall not be applied to restrict CLEC access.

### **9.7.2 Terms and Conditions**

9.7.2.0 Malheur shall unbundle dark fiber transport between any pair of Malheur Wire Centers except where, through application of "Tier" classifications described in Section 4 of this Agreement, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Malheur must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

9.7.2.1 Malheur will provide CLEC with non-discriminatory access to UDF in accordance with Section 9.1. Malheur will provide UDF of substantially the same quality as the fiber facilities that Malheur uses to provide retail service to its own End User Customers.

9.7.2.2 Malheur provides access to unbundled Dark Fiber at:

9.7.2.2.1 Accessible terminations such as fiber distribution panels.

9.7.2.2.2 A point of technically feasible access is any point in Malheur's outside plant at or near an MTE premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or

fiber within to access the wiring in the MTE premises. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/distribution interface.

9.7.2.2.3 Intentionally Left Blank.

9.7.2.3 Malheur will provide CLEC with access to deployed Dark Fiber facilities. CLEC shall be responsible for obtaining and connecting electronic equipment, whether light generating or light terminating equipment, to the Dark Fiber at both ends, provided that if CLEC requests Malheur to obtain and connect the electronic equipment, Malheur will follow the requirements of Section 9.19 in deciding whether or not to build the facilities for CLEC.

9.7.2.4 Malheur will provide Unbundled Dark Fiber to CLEC in increments of one (1) or two (2) strands. CLEC may obtain up to twenty-five percent (25%) of available Dark Fibers or four (4) Dark Fiber strands, whichever is greater, in each fiber cable segment over a twelve (12) month period. Before CLEC may order additional UDF on such fiber cable segment, CLEC must demonstrate efficient use of existing fiber in each cable segment. Efficient use of interoffice cable segments is defined as providing a minimum of OC-12 termination on each fiber pair. Efficient use of UDF MTE Subloop fiber is defined as providing a minimum of OC-3 termination on each fiber pair. CLEC may designate five percent (5%) of its fibers along a fiber cable segment, or two (2) strands, whichever is greater, for maintenance spare, which fibers or strands are not subject to the termination requirements in this paragraph.

9.7.2.5 Malheur shall not have an obligation to unbundle Dark Fiber in the following circumstances:

a) Malheur will not unbundle Dark Fiber that Malheur utilizes for maintenance or reserves for maintenance spare for Malheur's own use. Malheur shall not reserve more than five percent (5%) of the fibers in a sheath, or two (2) strands, whichever is greater, for maintenance or maintenance spare for Malheur's own use.

b) Malheur will not be required to unbundle Dark Fiber if Malheur demonstrates to the Commission by a preponderance of the evidence that such unbundling would create a likely and foreseeable threat to its ability to meet its Carrier of last resort obligations as established by any regulatory authority. Malheur shall initiate such proceeding within seven (7) Days of denying CLEC's request (by written notice) to unbundle Dark Fiber where such fiber is available. In this proceeding, Malheur shall not object to using the most expeditious procedure available under state law, rule or regulation. Malheur shall be relieved of its unbundling obligations, related to the specific Dark Fiber at issue, pending the proceeding before the Commission. If Malheur fails to initiate such pending proceeding within such seven (7) Day period, CLEC's request to unbundle Dark Fiber shall be reinstated and the ordering and Provisioning processes of Section 9.7.3 shall continue.

9.7.2.6 Intentionally Left Blank.

9.7.2.7 Specifications, interfaces and parameters for Dark Fiber are described in Qwest's Technical Publication 77383.

9.7.2.8 CLEC is responsible for trouble isolation before reporting trouble to Malheur.

9.7.2.9 Intentionally Left Blank.

9.7.2.10 Upon thirty (30) Days notification to CLEC, Malheur may initiate a proceeding to reclaim Dark Fiber strands from CLEC that were not serving End User Customers at the time of Malheur's notice to CLEC. In such proceeding, Malheur shall have the burden to prove that Malheur needs such fiber strands in order to meet its Carrier of last resort obligations as established by any regulatory authority. In such proceeding, CLEC shall not object to using the most expeditious procedure available under state law, rule or regulation. CLEC shall be entitled to retain such strands of UDF for any purpose permitted under this Agreement pending the proceeding before the Commission; provided, however, that such use shall be at CLEC's sole risk of any reclamation approved by the Commission, including the risk of termination of service to End User Customers. CLEC may designate five percent (5%) of its fibers along a fiber cable segment, or two (2) strands, whichever is greater, for maintenance spare, which fibers or strands are not subject to the reclamation requirements in this paragraph.

9.7.2.11 Intentionally Left Blank.

9.7.2.12 CLEC must have established Collocation or other Technically Feasible means of network demarcation pursuant to Section 9.1.4 of this Agreement at both terminating points of the UDF-IOF. No Collocation is required in intermediate Wire Centers within a UDF or at Wire Centers where CLEC's UDFs are cross connected. CLEC has no access to UDF at those intermediate Wire Centers.

9.7.2.12.1 CLEC-to-CLEC connections with UDF for the mutual exchange of traffic is permissible pursuant to the provisions in Section 9.7.

9.7.2.13 CLEC is responsible for all work activities at the MTE premises. All negotiations with the premises End User Customer and or premises owner are solely the responsibility of CLEC.

9.7.2.14 Intentionally Left Blank.

9.7.2.15 Access to Dark Fiber MTE Subloops at or near an MTE Terminal within a non-Malheur owned MTE is done through an MTE-POI. Collocation is not required to access MTE Subloops.

9.7.2.16 CLEC will incur all costs associated with disconnecting the UDF from its side of the network Demarcation Point.

9.7.2.17 Malheur and CLEC will jointly participate in continuity testing within the Provisioning interval established in Exhibit C. Malheur and CLEC must coordinate on the date and time for this continuity testing. As part of their respective duties regarding this continuity test, Malheur shall furnish a light detector at one (1) termination point of the UDF, and CLEC shall furnish light generating equipment at the other termination point of the UDF as described below:

9.7.2.17.1 CLEC may identify on its order the Wire Center at which Malheur must provide a light detector and the Wire Center at which CLEC will provide light generating equipment. If CLEC does not identify the Wire Center on its order, Malheur and CLEC shall mutually agree on the Wire Center at which CLEC will provide the light generating equipment.

9.7.2.17.2 Intentionally Left Blank.

9.7.2.17.3 Intentionally Left Blank.

9.7.2.18 If, within ten (10) Days of the date Malheur provisioned an order for UDF, CLEC demonstrates that the UDF pair(s) provisioned over requested route do not meet the minimum parameters set forth in Technical Publication 77383, and if the trouble is in the Malheur UDF facility, not due to fault on the part of CLEC, then Malheur will at no additional cost, attempt to repair the UDF as it relates to Malheur cross connects and jumpers. If Malheur cannot repair the UDF to the minimum parameters set forth in Technical Publication 77383, Malheur will replace the UDF if suitable UDF pair(s) are available, at no additional nonrecurring charge. If Malheur cannot replace the UDF upon receipt of CLEC's disconnect order, Malheur will refund the nonrecurring charges associated with the Provisioning excluding IRI, FVQP and Field Verification and will discontinue all recurring charges.

9.7.2.19 Intentionally Left Blank.

9.7.2.20 Intentionally Left Blank.

### 9.7.3 Ordering Processes

Ordering processes and installation intervals are as follows:

9.7.3.1 The first step of the UDF ordering process is the inquiry process. The UDF inquiry is used to determine the availability of UDF.

9.7.3.1.1 CLEC must submit a UDF inquiry and CLEC must specify the two (2) locations and the number of fibers requested.

9.7.3.1.2 Malheur will notify CLEC, within the interval set forth in Exhibit C of this Agreement, that: (i) UDF is available to satisfy CLEC's request, (ii) UDF is not available to satisfy CLEC's request; or (iii) Malheur, in writing, denies CLEC's request pursuant to Section 9.7.2.5(b). Malheur shall provide written notice of denials pursuant to (iii) above.

9.7.3.1.3 If there is UDF available, the UDF simple inquiry response and the complex inquiry response will contain up to five (5) available UDF routes between the CLEC-specified end locations. If additional routes are available, Malheur will notify CLEC that such additional routes exist and negotiate how that additional information will be made available.

9.7.3.2 CLEC will establish network Demarcation Points to accommodate UDF optical terminations via Collocation or other Technically Feasible means or network demarcation pursuant to Section 9.1.4 of this Agreement. If Collocation and or other

network demarcation arrangements have not been completed, CLEC must have obtained preliminary APOT address information (CFA – Connecting Facility Assignment) for its network Demarcation Points in each Malheur Wire Center where the UDF terminates prior to placing an order for UDF. When preliminary APOT has been established and delivered to CLEC, Malheur can begin processing the UDF Provisioning order upon receipt of the UDF Provisioning request. If the preliminary APOT address is changed by CLEC, a new Provisioning time line for UDF must be established.

9.7.3.3 Based on the CLEC request, (UDF-IOF or UDF MTE Subloop), there are two (2) possible termination scenarios.

9.7.3.3.1 Termination at an MTE. CLEC shall access the UDF MTE Subloop on the MTE Premises at a Technically Feasible point if possible. If access is not Technically Feasible on the MTE Premises, then CLEC may request access to UDF MTE Subloop at a Technically Feasible point near the MTE Premises. Malheur will prepare and submit to CLEC a quotation along with the original Field Verification Quote Preparation form (FVQP) within the interval set forth in Exhibit C. Quotations are on an Individual Case Basis (ICB) and will include costs and an interval in accordance with Exhibit C.

9.7.3.3.2 Intentionally Left Blank.

9.7.3.3.3 Termination at Malheur Wire Center. If spare fiber is available, and CLEC chooses to proceed, and the request is for UDF terminations at a Malheur Wire Center, Malheur will begin the Provisioning process upon notification from CLEC to proceed and the receipt of fifty percent (50%) of the nonrecurring charges. The notification to proceed is accomplished by completing, signing and returning the original inquiry request to the account manager. Provisioning intervals for this type of request are set forth in Exhibit C. CLEC will be notified that Provisioning is complete and the remaining nonrecurring charges and associated recurring charges will be billed.

9.7.3.4 An order may be canceled any time up to and including the Service Date.

9.7.3.5 CLEC may reserve Dark Fiber for CLEC during Collocation builds. Prior to reserving space, CLEC must place an inquiry pursuant to Section 9.7.3.1 of this Agreement and receive a UDF inquiry response that reflects that the route to be reserved is available. CLEC is also strongly encouraged to request a field verification that the route to be reserved is available. If CLEC does not obtain a field verification, CLEC assumes the risk that records upon which the UDF inquiry response is based may be in error. CLEC may reserve UDF for thirty (30), sixty (60), or ninety (90) Days. CLEC may extend or renew reservations if there is delay in completion of the Collocation build. All applicable UDF recurring charges specified in Section 9.7.5.2 will be assessed at the commencement of the reservation. Nonrecurring charges for Provisioning and cross connects will be assessed at the time of installation.

#### **9.7.4 Maintenance and Repair**

9.7.4.1 The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC Cross Connections will be repaired by CLEC and Malheur Cross Connections will be repaired by Malheur. Maintenance and Repair

processes are contained in the Access to OSS Section of this Agreement.

9.7.4.2 If it is determined that the UDF does not meet the minimum parameters of Technical Publication 77383 without fault of CLEC, and if the trouble is in the Malheur UDF facility, then Malheur will attempt to repair the UDF as it relates to Malheur cross connects and jumper at no additional cost. If Malheur cannot repair the UDF to the minimum parameters set forth in Technical Publication 77383, then Malheur will replace the UDF at no additional cost if suitable UDF pair(s) are available. If Malheur cannot replace the UDF with available pairs, then it, upon receipt of CLEC's disconnect order, will discontinue the recurring charges effective as of the date of the commencement of the trouble.

### 9.7.5 Rate Elements

Exhibit A provides recurring and nonrecurring rates for Dark Fiber and also provides Miscellaneous Charges.

9.7.5.1 Dark Fiber includes the following rate elements:

- a) Initial Records Inquiry (IRI). This rate element is a pre-order work effort that investigates the availability of UDF. This is a one-time charge for each route check requested by CLEC. A simple IRI determines if UDF is available between two (2) Malheur Wire Centers. A complex IRI is used to determine if a UDF MTE Subloop is available. Malheur will bill CLEC the IRI immediately upon receipt of the inquiry. The IRI is a record search and does not guarantee the availability of UDF.
- b) Field Verification and Quote Preparation (FVQP). This rate element is a pre-order work effort to estimate the cost of providing UDF access to CLEC at locations other than Malheur Wire Centers. Malheur will prepare a quotation which will explain what work activities, timeframes, and additional costs, including recurring and non-recurring costs, are associated with providing access to this FDP location. This quotation will be good for thirty (30) Days. The FVQP is not necessary when the request is between Malheur Wire Centers (i.e., simple IRI). If FVQP is applicable pursuant to this section and CLEC orders UDF that has been reserved after a Field Verification has been performed, then the charge for FVQP will be reduced by the amount of the Engineering Verification charge assessed in the context of the reservation.
- c) Engineering Verification. This rate element is an additional records check for Unbundled Dark Fiber MTE Subloop.

9.7.5.2 The following rate elements are used once the availability of UDF has been established and CLEC chooses to access UDF.

9.7.5.2.1 Unbundled Dark Fiber - Single Strand - IOF Rate Elements

- a) UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Malheur Wire Center. Two (2) UDF-IOF terminations apply per cross connect provided on the facility. Termination charges

apply for each intermediate office terminating at an FDP or like cross connect point.

b) UDF-IOF Fiber Transport, (Per Strand) Rate Element. This recurring rate element applies per strand. This rate element provides a transmission path between Malheur Wire Centers. This rate element is mileage sensitive based on the route miles of the UDF rounded up to the next mile.

c) UDF-IOF Fiber Cross Connect Rate Element. This rate element has both a recurring and nonrecurring component and is used to extend the optical connection from the IOF FDP to CLEC's optical Demarcation Point (ICDF). A minimum of two (2) UDF-IOF fiber cross connects apply per strand. Cross connect charges apply for each intermediate office terminating at an FDP or like cross connect point. The nonrecurring rate will not be charged for cross connects already in place prior to CLEC's order for UDF-IOF.

9.7.5.2.2 Intentionally Left Blank.

9.7.5.2.3 Intentionally Left Blank.

9.7.5.2.4 Unbundled Dark Fiber - Order Charge, First Strand/Route, Per Order.

9.7.5.2.4.1 This rate element is the nonrecurring component assessed for installation of Unbundled Dark Fiber, by the strand. The element applies for the first strand that is requested to terminate at a single location.

9.7.5.2.5 Unbundled Dark Fiber - Order Charge, Each Additional Strand/Route, Per Order.

9.7.5.2.5.1 This rate element is the nonrecurring component assessed for installation of each additional Unbundled Dark Fiber strand. The element applies to each additional strand ordered to the same location, on the same request.

9.7.5.2.6 Unbundled Dark Fiber per Pair - IOF Rate Elements

9.7.5.2.6.1 UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Malheur Wire Center. Two UDF-IOF terminations apply per pair at each end of the facility. Termination charges apply for each intermediate Central Office terminating at an FDP or like cross connect point.

9.7.5.2.6.2 UDF-IOF Fiber Transport, (Pair) Rate Element. This rate element is a recurring component and applies per pair. This rate element provides a transmission path between Malheur Wire Centers. The recurring component of this rate element is mileage sensitive based

on the route miles of the UDF rounded up to the next mile.

9.7.5.2.7 UDF-IOF Fiber Cross Connect Rate Element.

9.7.5.2.7.1 This rate element has both a recurring and nonrecurring component and is used to extend the optical connection from the IOF FDP to CLEC's optical Demarcation Point. A minimum of two (2) UDF-IOF fiber cross connects apply per pair. Cross connect charges apply for each intermediate Central Office terminating at an FDP or like cross connect point. The nonrecurring rate will not be charged for cross connects already in place prior to CLEC's order for UDF-IOF.

9.7.5.2.8 Unbundled Dark Fiber - Order Charge, First Pair/Route, Per Order.

9.7.5.2.8.1 This rate element is the nonrecurring component assessed for installation of Unbundled Dark Fiber, by the pair. The element applies for the first pair that is requested to terminate at a single location.

9.7.5.2.9 Unbundled Dark Fiber- Order Charge, Each Additional Pair/Route, Per Order, Per Location, Per Request.

9.7.5.2.9.1 This rate element is the nonrecurring component assessed for installation of each additional Unbundled Dark Fiber pair. The element applies to each additional pair ordered to the same location, or subsequent locations for CLEC.

9.7.5.2.10 Unbundled Dark Fiber Splice.

9.7.5.2.10.1 This rate element is the nonrecurring charge assessed for the splice location, if required, to make the UDF MTE subloop accessible. This rate element is for the work performed at the accessible first manhole or splicing location associated with an UDF MTE subloop order.

9.7.5.2.11 Unbundled Dark Fiber MTE Subloop.

9.7.5.2.11.1 This rate element includes recurring and nonrecurring charges assessed for the UDF MTE subloop and it is ICB (Individual Case Basis).

9.7.5.2.12 Miscellaneous Services. The following miscellaneous services, as described in Section 9.1.12, are available with Dark Fiber. Miscellaneous Charges apply for miscellaneous services.

- a) Cancellation
- b) Dispatch
- c) Maintenance of Service.

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**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**

Malheur will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Malheur 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 Malheur constructs to fulfill CLEC's request for UNEs, Malheur will bid this construction on a case-by-case basis. Malheur will charge for the construction through nonrecurring charges as described in this Section 9.19. When CLEC orders the same or substantially similar service available to Malheur End User Customers, nothing in this Section shall be interpreted to authorize Malheur 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 Malheur End User Customer.

9.19.1 Malheur reserves the right to determine if Malheur will undertake requested construction. Some circumstances under which Malheur will reject a construction request include, but are not limited to, if it is determined that the requested element will jeopardize the reliability of Malheur's existing network, endanger Malheur's employees or consumers, is not consistent with the National Electrical Code (NEC), or does not meet Network Equipment Building Standards (NEBS) requirements. If Malheur agrees to construct a network element, the following will apply.

9.19.2 CLEC may request that Malheur construct new facilities for use in providing services offered as Unbundled Network Elements (UNEs) using the CLEC-Requested Unbundled Network Elements Construction ("CRUNEC") method. CRUNEC is not required for requests that can be resolved through facility work or assignments. CRUNEC is not available for requests for facilities that are not offered as UNEs. Malheur's CRUNEC applies to the following Wholesale products and services:

- Enhanced Extended Loop (EEL)
- Unbundled Dark Fiber (UDF)
- Unbundled Dedicated Interoffice Transport (UDIT)
- Unbundled Local Loop

9.19.2.1 To make a request for construction of facilities, CLEC must submit a CRUNEC request by contacting the Malheur service manager.

### 9.19.3 Rates for CRUNEC

9.19.3.1 A Records Quote Preparation Fee (RQPF) applies, and is a nonrecurring charge assessed prior to preparation of a Records Quotation, which is a high level overview and estimate of the cost of construction. This construction estimate is based on records only and is not binding on Malheur. Credit in the amount of the RQPF will be applied to the Construction Quote Preparation Fee that is described below.

9.19.3.2 The Construction Quote Preparation Fee (CQPF) is a nonrecurring charge assessed prior to preparation of the CRUNEC quotation. The CRUNEC quotation provides the amount CLEC will pay should it agree to pursue construction. Credit in the amount of the CQPF will be applied to the cost of construction if CLEC accepts the quoted CRUNEC price and agrees to pursue construction.

9.19.3.2.1 CLEC may choose to first receive a Records Quotation, or may choose to forego the Records Quotation and pay the CQPF for the CRUNEC quotation, at any time after receiving notification that facilities are not available to complete a service request.

9.19.3.3 Malheur will retain the CQPF if CLEC chooses not to proceed with the construction. At any point after remitting payment for construction, if CLEC decides to begin but then to discontinue construction, Malheur will refund the Construction payment, excluding expenditures already incurred by Malheur for work completed (including work Engineered, Furnished and/or Installed (EF&I)). Malheur will provide a brief description of work completed.

9.19.3.3.1 EF&I is defined as:

- Engineering labor to analyze the needs for the requested UNE and design and issue the required work orders
- Furnished material cost
- Installation labor costs to complete the work order

9.19.3.4 The amount of the CRUNEC quotation is determined using the same financial analysis criteria, and costs to recover for EF&I, that Malheur uses to assess whether to build the equivalent facilities for itself.

9.19.3.5 Rates are included in Exhibit A to this Agreement.

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**9.23 Unbundled Network Element Combinations**

**9.23.1 General Terms**

9.23.1.1 Malheur shall provide CLEC with non-discriminatory access to combinations of Unbundled Network Elements, including but not limited to, Enhanced Extended Loop (EEL), according to the following terms and conditions.

9.23.1.2 Malheur will offer to CLEC UNE Combinations, on rates, terms and conditions that are just, reasonable and non-discriminatory in accordance with the terms and conditions of this Agreement and the requirements of Section 251 and Section 252 of the Act, the applicable FCC rules, and other Applicable Laws. The methods of access to UNE Combinations described in this section are not exclusive. Malheur will make available any other form of access requested by CLEC that is consistent with the Act and the regulations thereunder. CLEC shall be entitled access to all combinations functionality as provided in FCC rules and other Applicable Laws. Malheur shall not require CLEC to access any UNE Combinations in conjunction with any other service or element unless specified in this Agreement or as required for Technical Feasibility reasons. Malheur shall not place any use restrictions or other limiting conditions on UNE Combinations accessed by CLEC, except as specified in this Agreement or required by Existing Rules.

9.23.1.2.1 Changes in law, regulations or other "Existing Rules" relating to UNEs and UNE Combinations, including additions and deletions of elements Malheur is required to unbundle and/or provide in a UNE Combination, shall be incorporated into this Agreement pursuant to Section 2.2. CLEC and Malheur agree that the UNEs identified in Section 9 are not exclusive and that pursuant to changes in FCC rules, or the Bona Fide Request process, CLEC may identify and request that Malheur furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC.

9.23.1.2.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., switched and special access services offered pursuant to Tariff), and request Malheur to perform the necessary functions to provision such Commingling. CLEC will be required to provide the Connecting Facility Assignment (CFA) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Malheur to perform the Commingling of such services. Malheur shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Malheur's network with access services. All requests for combinations and Commingling will be subject to the terms and conditions in Section 9.1. In addition to the UNE Combinations provided by Malheur to CLEC hereunder, Malheur shall permit CLEC to combine any UNE provided by Malheur with another UNE provided by Malheur or with compatible

network components provided by CLEC or provided by third parties to CLEC in order to provide Telecommunications Services. Notwithstanding the foregoing, CLEC can connect its UNE Combination to Malheur's Directory Assistance and operator services platforms.

9.23.1.2.3 Intentionally Left Blank.

9.23.1.3 When ordered as combinations of UNEs, Network Elements that are currently combined and ordered together will not be physically disconnected or separated in any fashion except for technical reasons or if requested by CLEC. Network Elements to be provisioned together shall be identified and ordered by CLEC as such. When CLEC orders in combination UNEs that are currently interconnected and functional, such UNEs shall remain interconnected or combined as a working service without any disconnection or disruption of functionality.

9.23.1.4 When ordered in combination, Malheur will combine for CLEC UNEs that are ordinarily combined in Malheur's network, provided that facilities are available.

9.23.1.5 When ordered in combination, Malheur will combine for CLEC UNEs that are not ordinarily combined in Malheur's network, provided that facilities are available and such combination:

9.23.1.5.1 Is Technically Feasible;

9.23.1.5.2 Would not impair the ability of other Carriers to obtain access to UNEs or to interconnect with Malheur's network; and

9.23.1.5.3 Would not impair Malheur's use of its network.

9.23.1.6 When ordered in combination, Malheur will combine CLEC UNEs with Malheur UNEs, provided that facilities are available and such combination:

9.23.1.6.1 Is Technically Feasible;

9.23.1.6.2 Shall be performed in a manner that provides Malheur access to necessary facilities;

9.23.1.6.3 Would not impair the ability of other Carriers to obtain access to UNEs or to interconnect with Malheur's network; and

9.23.1.6.4 Would not impair Malheur's use of its network.

9.23.1.7 Intentionally Left Blank.

**9.23.2 Description**

UNE Combinations are available in, but not limited to, the following standard products: EEL, subject to the limitations set forth below. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. Malheur will provision UNE Combinations pursuant to the terms of this Agreement without requiring an amendment to this Agreement, provided that all of the UNEs included in the

combination request, and their associated Billing rate elements are contained in this Agreement. If Malheur develops additional UNE Combination products, CLEC can order such products without using the Special Request Process, but CLEC may need to submit a New Customer Questionnaire and execute an amendment before ordering such products.

### 9.23.3 Terms and Conditions

9.23.3.1 Malheur shall provide non-discriminatory access to UNE Combinations on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of a UNE Combination Malheur provides, as well as the access provided to that UNE Combination, will be equal between all Carriers requesting access to that UNE Combination; and, where Technically Feasible, the access and UNE Combination provided by Malheur will be provided in "substantially the same time and manner" to that which Malheur provides to itself. In those situations where Malheur does not provide access to UNE Combinations itself, Malheur will provide access in a manner that provides CLEC with a meaningful opportunity to compete.

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9.23.3.5 Intentionally Left Blank.

9.23.3.6 Intentionally Left Blank.

9.23.3.7 Enhanced Extended Loop (EEL) -- EEL is a combination of Loop and dedicated interoffice transport and may also include multiplexing. EEL transport and Loop facilities may utilize DS0 through DS3 bandwidths. The terms and conditions of Section 9.6 shall apply to the Unbundled Dedicated Interoffice Transport portion of the EEL. The terms and conditions of Section 9.2 shall apply to the Loop portion of the EEL. EEL is offered as a conversion from private line/special access or as new installation subject to the terms of Section 9.1.1.

9.23.3.7.1 Service Eligibility Criteria in Section 9.1.1.10 apply to combinations of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs (e.g., high capacity loops attached to special access transport). CLEC cannot utilize combinations of Unbundled Network Elements that include DS1 or DS3 Unbundled Loops and DS1 or DS3 Unbundled Dedicated Interoffice Transport (UDIT) to create high capacity EELs unless CLEC certifies to Malheur that the EELs meet the Service Eligibility Criteria in Section 9.1.1.10.

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9.23.3.7.2.1 Intentionally Left Blank.

9.23.3.7.2.2 Intentionally Left Blank.

9.23.3.7.2.3 Intentionally Left Blank.

9.23.3.7.2.4 Intentionally Left Blank.

9.23.3.7.2.5 Intentionally Left Blank.

9.23.3.7.2.6 Intentionally Left Blank.

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9.23.3.7.2.8 Intentionally Left Blank.

9.23.3.7.2.9 Intentionally Left Blank.

9.23.3.7.2.10 Intentionally Left Blank.

9.23.3.7.2.11 CLEC may request the conversion of an existing private line/special access service to an EEL. Retail and/or resale private line circuits (including multiplexing) may be converted to EEL if the conversion is Technically Feasible and they meet the terms of Section 9.1.1. Malheur will provide CLEC with conversions to EELs according to the standard intervals set forth in Exhibit C. Work performed by Malheur to provide Commingled EELs at CLEC's request or to provide services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled EEL service arrangement. Provisioning intervals applicable to services included in a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Malheur, and Malheur completes work required to provide for the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

9.23.3.7.2.11.1 Intentionally Left Blank.

9.23.3.7.2.12 EEL is a combination of Loop and dedicated interoffice transport used for the purpose of connecting an End User Customer to CLEC's Collocation. EEL can also be ordered as a new installation of circuits for the purpose of CLEC providing services to End User Customers.

9.23.3.7.2.12.1 Terms and Conditions

9.23.3.7.2.12.2 Intentionally Left Blank.

9.23.3.7.2.12.3 One (1) end of the interoffice facility of a high capacity EEL must originate at CLEC's Collocation in a Wire Center other than the Serving Wire Center of the Loop.

9.23.3.7.2.12.4 EEL combinations consist of Loops and interoffice transport of the same bandwidth (Point-to-Point EEL).

High capacity point-to-point EELs must originate from CLEC's Collocation in a Wire Center other than the Serving Wire Center of the Loop. When multiplexing is requested, EEL may consist of Loops and interoffice transport of different bandwidths (multiplexed EEL).

9.23.3.7.2.12.5 Intentionally Left Blank.

9.23.3.7.2.12.6 Installation intervals are set forth in Exhibit C and in the Service Interval Guide (SIG) on the following web site address: <http://www.qwest.com/carrier/guides/sig/index.html>.

9.23.3.7.2.12.7 Intentionally Left Blank.

9.23.3.7.2.12.8 EEL is available only where existing facilities are available.

9.23.3.7.2.12.9 Rearrangements may be requested for work to be performed by Malheur on an existing EEL or on some private line/special access circuits when coupled with a conversion-as-specified request to convert to EEL.

#### 9.23.3.8 Ordering

9.23.3.8.1 Intentionally Left Blank.

9.23.3.8.2 CLEC will submit EEL orders using the LSR process.

9.23.3.8.3 Malheur will install the appropriate channel card based on the DS0 EEL Loop LSR order and apply the charges.

9.23.3.8.4 Intentionally Left Blank.

9.23.3.8.5 One (1) LSR is required when CLEC orders Point-to-Point EEL. Multiplexed EEL and EEL Loops must be ordered on separate LSRs.

9.23.3.8.6 Out of Hours Project Coordinated Installations: CLEC may request project coordinated installations outside of Malheur's standard installation hours. This permits CLEC to obtain a coordinated installation for EEL where CLEC requests work to be performed outside of Malheur's standard installation hours. For purposes of this Section, Malheur's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, excluding holidays. Installations commencing outside of these hours are considered to be out of hours project coordinated installations.

9.23.3.8.6.1 The date and time for the out of hours project coordinated installation requires up-front planning and shall be negotiated between Malheur and CLEC. All requests will be processed on a first come, first served basis and are subject to Malheur's ability to meet a reasonable demand. Considerations such as volumes, system down time, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting

the same appointment times in the same Switch (Switch contention) must be reviewed.

9.23.3.8.6.2 To request out of hours project coordinated installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an out of hours project coordinated Installation in the "remarks" section of the LSR.

#### 9.23.3.9 Rate Elements

Exhibit A provides recurring and nonrecurring rates for EEL and also provides Miscellaneous Charges.

9.23.3.9.1 EEL Loop. The EEL Loop is the Loop connection between the End User Customer premises and the Serving Wire Center. EEL Loop is available in DS0, DS1, and DS3 bandwidths. Recurring and nonrecurring charges apply.

9.23.3.9.2 EEL Transport. EEL Transport consists of the dedicated interoffice facilities between Malheur Wire Centers. EEL Transport is available in DS0, DS1, and DS3 bandwidths. Recurring charges apply.

9.23.3.9.3 EEL Multiplexing. EEL multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. EEL multiplexing is ordered with EEL Transport. Recurring and nonrecurring charges apply.

9.23.3.9.4 DS0 Low Side Channelization and DS0 MUX Low Side Channelization. EEL DS0 Channel Cards are required for each DS0 EEL Loop. Channel Cards are available for Analog Loop Start, Ground Start, Reverse Battery, and No Signaling.

9.23.3.9.5 Intentionally Left Blank.

9.23.3.9.6 Rearrangements. Nonrecurring charges apply for work performed by Malheur on an existing EEL or on private line/special access circuits when coupled with a conversion-as-specified request to convert to EEL.

9.23.3.9.7 Nonrecurring charges apply for conversions of private line/Special Access to EEL.

9.23.3.9.8 Miscellaneous Charges. The following miscellaneous services, as described in Section 9.1.12, are available with EEL. Miscellaneous Charges apply for miscellaneous services.

- a) Additional labor – installation Miscellaneous Charges apply for out-of-hours project coordinated installations scheduled to commence out of hours, or rescheduled by CLEC to commence out of hours, in addition to standard nonrecurring charges for the installation
- b) Additional labor – other Miscellaneous Charges apply for Optional Testing

- c) Cancellation
- d) Design change
- e) Dispatch
- f) Expedite
- g) Maintenance of Service.

9.23.3.10 CLEC may request access to and, where appropriate, development of, additional UNE Combinations. For UNEs Malheur currently combines in its network, CLEC can use the Special Request Process (SRP) set forth in Exhibit F. For UNEs that Malheur does not currently combine, CLEC must use the Bona Fide Request Process (BFR). In its BFR or SRP request, CLEC must identify the specific combination of UNEs, identifying each individual UNE by name as described in this Agreement.

9.23.3.11 Intentionally Left Blank.

9.23.3.12 If CLEC is obtaining services from Malheur 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 UNEs or a UNE Combination, 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 shall be construed as expanding the rights otherwise granted by this Agreement or by law to elect to make such conversions.

9.23.3.13 For installation of new UNE Combinations, CLEC will not be assessed UNE rates for UNEs ordered in combination until access to all UNEs that make up such combination have been provisioned to CLEC as a combination.

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9.23.3.15 Intentionally Left Blank.

9.23.3.16 In the event Malheur terminates the Provisioning of any UNE Combination service to CLEC for any reason, CLEC shall be responsible for providing any and all necessary notice to its End User Customers of the termination. In no case shall Malheur be responsible for providing such notice to CLEC's End User Customers. Malheur shall only be required to notify CLEC of Malheur's termination of the UNE Combination service on a timely basis consistent with Commission rules and notice requirements.

9.23.3.17 CLEC, or CLEC's agent, shall act as 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 shall inform its End User Customers that they are End User Customers of CLEC. CLEC's End User Customers contacting

Malheur will be instructed to contact CLEC, and Malheur's End User Customers contacting CLEC will be instructed to contact Malheur. 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 Malheur or CLEC from discussing its products and services with CLEC's or Malheur's End User Customers who call the other Party seeking such information.

#### **9.23.4 Rates and Charges**

9.23.4.1 The rates and recurring and nonrecurring charges for the individual Unbundled Network Elements that comprise UNE Combinations are contained in Exhibit A, and Exhibit A also provides Miscellaneous Charges.

9.23.4.1.1 Recurring monthly charges for each Unbundled Network Element that comprise the UNE Combination shall apply when a UNE Combination is ordered.

9.23.4.1.2 Nonrecurring charges, if any, will apply based upon the cost to Malheur of Provisioning the UNE Combination and providing access to the UNE Combination.

9.23.4.1.3 Miscellaneous Charges will apply based upon Malheur providing miscellaneous services, if made available, with UNE combination.

9.23.4.2 If the Commission takes any action to adjust the rates previously ordered, Malheur will make a compliance filing to incorporate the adjusted rates into Exhibit A. Upon the compliance filing by Malheur, the Parties will abide by the adjusted rates on a going-forward basis, or as ordered by the Commission.

9.23.4.3 CLEC shall be responsible for Billing its End User Customers served over UNE Combinations for surcharges required of CLEC by statute, regulation or otherwise required.

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9.23.4.5 Intentionally Left Blank.

9.23.4.6 Malheur shall have a reasonable amount of time to implement system or other changes necessary to bill CLEC for Commission-ordered rates or charges associated with UNE Combinations.

#### **9.23.5 Ordering Process**

9.23.5.1 UNE Combinations and associated products and services are ordered via an LSR or ASR, as appropriate. Ordering processes are contained in this Agreement and in the PCAT. The following is a high-level description of the ordering process:

9.23.5.1.1 Intentionally Left Blank.

9.23.5.1.2 Intentionally Left Blank.

9.23.5.1.3 Step 1: Complete product questionnaire with account team representative.

9.23.5.1.4 Step 2: Obtain Billing Account Number (BAN) through account team representative.

9.23.5.1.5 Step 3: Allow two (2) to three (3) weeks from Malheur's receipt of a completed questionnaire for accurate loading of UNE Combination rates to the Malheur Billing system.

9.23.5.1.6 Step 4: After account team notification, place UNE Combination orders via an LSR or ASR, as appropriate.

9.23.5.1.7 Additional information regarding the ordering processes are located at: [http://www.qwest.com/wholesale/solutions/clecFacility/une\\_p\\_c.html](http://www.qwest.com/wholesale/solutions/clecFacility/une_p_c.html).

9.23.5.2 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization as set forth in this Agreement.

9.23.5.3 Standard service intervals for each EEL are set forth in Exhibit C. For UNE Combinations with appropriate retail analogues, CLEC and Malheur will use the standard Provisioning interval for the equivalent retail service. CLEC and Malheur can separately agree to Due Dates other than the standard interval.

9.23.5.4 Due Date intervals are established when Malheur receives a complete and accurate Local Service Request (LSR) or Access Service Request (ASR) made through the IMA, EDI or Exact interfaces or through facsimile. For EEL, the date the LSR or ASR is received is considered the start of the service interval if the order is received on a business day prior to 3:00 p.m. For EEL, the service interval will begin on the next business day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

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9.23.5.6 Intentionally Left Blank.

9.23.5.7 For EELs, CLEC shall provide Malheur and Malheur shall provide CLEC with points of contact for order entry, problem resolution, repair, and in the event special attention is required on service request.

## **9.23.6 Billing**

9.23.6.1 Malheur shall provide CLEC, on a monthly basis, within seven (7) to ten (10) 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 Customer sub-account information consistent with the samples

available for CLEC review.

### **9.23.7 Maintenance and Repair**

9.23.7.1 Malheur will maintain facilities and equipment that comprise the service provided to CLEC as a UNE Combination. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Malheur facilities or equipment, other than by connection or disconnection to any interface between Malheur and the End User Customer, without the written consent of Malheur.

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## Section 10.0 – ANCILLARY SERVICES

### 10.1 Interim Number Portability

#### 10.1.1 Description

10.1.1.1 Interim Number Portability (INP) service is an arrangement that allows an End User Customer to retain its dialed telephone number when switching to another service provider. INP service can be provided by Malheur to CLEC or by CLEC to Malheur. For the purposes of this section, the Party porting traffic to the other Party shall be referred to as the "INP Provider" and the Party receiving INP traffic for termination shall be referred to as the "INP Requestor."

10.1.1.2 INP applies to those situations where an End User Customer elects to transfer to a New Service Provider and such End User Customer also wishes to retain its existing telephone number. INP consists of INP Provider's provision to the INP Requestor the capability to route calls placed to telephone numbers assigned to the INP Provider's Switches to the INP Requestor's Switches. INP is available only for working telephone numbers assigned to the INP Provider's End User Customers who request to transfer to the INP Requestor's service. Local Interconnect Service (LIS) is required for INP.

10.1.1.3 INP is available as INP-Remote Call Forwarding (INP-RCF), Direct Inward Dialing (DID), and Directory Number Route Index (DNRI) and NXX Migration. DNRI is available as either direct to an End Office Switch or through a Tandem Switch, also referred to as DNRI Tandem (RIPH) or portability hub. NXX Migration, or Local Exchange Routing Guide Reassignment, reassigns the entire Central Office Code (NXX) to CLEC's Switch if the NXX Code is used solely for one (1) End User Customer.

#### 10.1.1.4 Remote Call Forwarding (RCF)

10.1.1.4.1 RCF permits a call to an INP Provider's assigned telephone number to be translated to the INP Requestor's dialable local telephone number. With the RCF solution, a permanent RCF is established in Malheur's Switch forwarding any incoming call to the telephone number assigned and maintained in CLEC's Switch.

10.1.1.4.2 INP via RCF also requires office equipment (OE), on a per telephone number basis. The INP Requestor will need to provide a forecast of deployment sites and estimated quantities of ported telephone numbers to assist in an assessment of available porting methods. Each request for INP via RCF will be analyzed by the Infrastructure Availability Center, IAC, to determine if OE is available.

#### 10.1.1.5 Direct Inward Dialing (DID)

DID permits incoming calls to be ported to the INP Requestor's Switch via a DID trunk configuration. Each DID trunk group used for INP is dedicated to carrying DID INP traffic between Malheur's End Office Switch and CLEC's End Office Switch. The traffic on these trunks cannot overflow to other trunks. In addition, inter-Switch signaling for DID is limited to multi-frequency (MF). This precludes passing the Calling Line ID to CLEC's

End Office Switch. With DID, because there is no SS7 capability, there are CLASS feature limitations. For DID, the INP Provider will deliver the dialed telephone number to the INP Requestor's Central Office.

#### 10.1.1.6 Directory Number Route Indexing (DNRI)

DNRI permits incoming calls to be ported to the INP Requestor's End Office Switch via a route index. A permanent route index is assigned to the End User Customer's ported telephone number in the INP Provider's End Office Switch. The INP Provider will deliver the dialed seven digit telephone number to the INP requestor's Central Office. INP Requestor may terminate the call as desired. Additional capacity for simultaneous call forwarding is available where Technically Feasible. The INP Requestor will need to specify the number of simultaneous calls to be forwarded for each telephone number ported. DNRI Tandem Switch routing requires an additional thirty (30) Days lead time to establish technical requirements for routing the ported calls.

### 10.1.2 Terms and Conditions

10.1.2.1 Malheur and CLEC will provide INP service in a non-discriminatory manner and with as little impairment of functioning, quality, reliability and convenience as possible.

10.1.2.2 Malheur will coordinate INP with Unbundled Loop cutovers in a reasonable amount of time and with minimum service disruption.

10.1.2.3 The Parties shall provide INP on a reciprocal basis to each other to the extent Technically Feasible, and in accordance with rules and regulations as, from time to time, prescribed by the FCC and/or the Commission.

10.1.2.4 Until the long term number portability solution, referred to as Local Number Portability (LNP), is implemented by the industry pursuant to regulations issued by the FCC or the Commission, the Parties agree to provide INP to each other through RCF, DID, DNRI and NXX migration. Local Interconnect Service (LIS) is required for INP.

10.1.2.5 Once Local Number Portability has been implemented within a Wire Center, INP will no longer be available for ordering within that Wire Center.

10.1.2.6 Upon LNP implementation, the INP offerings will be withdrawn subject to advance notice to the other Party. Both Parties will conform to the Western Region LNP Technical and Operations team guidelines and agreements for completion of INP to LNP conversion activity.

10.1.2.7 The INP Requestor's designated INP End Office Switch must return answer and disconnect supervision to the INP Provider's End Office Switch.

10.1.2.8 The INP Requestor will provide to the E911 database provider the network telephone number that the INP Requestor assigned to the INP Provider-assigned, ported telephone number. Updates to and maintenance of the INP information to the E911 database are the responsibility of the INP Requestor. For consistency in administration, the INP Requestor shall enter into a separate agreement

with the E911 database provider.

10.1.2.9 Malheur will update its Line Information Database (LIDB) listings for ported telephone numbers as directed by CLEC. Malheur will restrict or cancel calling cards associated with these ported telephone numbers. LIDB updates shall be completed by the Parties on the same business day each INP arrangement is activated.

10.1.2.10 An INP telephone number may be assigned by INP Requestor only to the INP Requestor's End User Customers located within the INP Provider's Local Calling Area and toll rating area that is associated with the NXX Code of the ported telephone number.

10.1.2.11 INP is applicable only if the INP Requestor is engaged in a reciprocal traffic exchange arrangement with the INP Provider.

10.1.2.12 Only the existing INP Provider assigned End User Customer telephone number may be used as a ported telephone number for INP.

10.1.2.13 An INP telephone number must be active and assigned to an End User Customer to accommodate INP.

10.1.2.14 INP services shall not be re-sold, shared or assigned by either Party to another LEC or CLEC.

10.1.2.15 INP is not offered for NXX Codes 555, 976, 960, and coin telephones, and Service Access Codes (i.e., 500, 700, 8XX, 900). INP is not available for Feature Group A seven-digit telephone numbers, including Foreign Exchange. Furthermore, INP telephone numbers may not be used for mass calling events.

10.1.2.16 The ported telephone number will be returned to the End Office Switch which originally had the ported telephone number when the End User Customer disconnects service from the INP Requestor. The INP Requestor shall not retain it and reassign it to another End User Customer. The normal intercept announcement will be provided by the INP Provider for the period of time until the telephone number is reassigned by the INP Provider.

10.1.2.17 Forecasts for INP must be included in the forecasting process detailed in Section 7 of this Agreement.

10.1.2.18 NXX Migration, or Local Exchange Routing Guide Reassignment, reassigns the entire Central Office Code (NXX) to CLEC's End Office Switch if the NXX Code is used solely for one (1) End User Customer. Where one Party has activated an entire NXX Code for a single End User Customer, or activated a substantial portion of an NXX Code for a single End User Customer with the remaining telephone numbers in that NXX Code either reserved for future use or otherwise unused, if such End User Customer chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX Code reassigned to an End Office Switch operated by the second Party through the NANP administrator. In addition, both Parties agree to cooperate in arranging necessary updates and industry notification in the LERG (and associated industry databases, routing tables, etc.). Such transfer will be accomplished with appropriate coordination between the Parties and subject to

appropriate industry lead-times (as identified in the LERG guidelines and the Central Office Code Administration guidelines) for movement of NXX Codes from one End Office Switch to another. Other applications of NXX Code migration will be discussed by the Parties as circumstances arise.

### 10.1.3 Ordering

10.1.3.1 Both Parties shall comply with ordering standards as developed by the industry. INP service is ordered via a Local Service Request and associated Number Portability forms. Specific details regarding the ordering of INP service is contained in the PCAT.

10.1.3.2 CLEC may order INP service either manually or through an electronic interface. The electronic gateway solution for ordering service is described in Section 12 of this Agreement.

10.1.3.3 Service intervals for INP are described below. These intervals apply when facilities and network capacity is available. Where facilities or network capacity is not available, intervals are on an Individual Case Basis (ICB). Orders received after 3:00 P.M. are considered the next business day. The following service intervals have been established for Interim Number Portability:

<u>Number of Lines</u>	<u>Interval</u>
Simple (1FR/1FB)	
1-49 lines	3 business days
50 or more lines	ICB
Complex (PBX Trunks/ISDN)	
1-8 lines or trunks	5 business days
9-16 lines or trunks	6 business days
17-24 lines or trunks	7 business days
25 or more lines or trunks	ICB
Centrex	
1-10 lines	5 business days
11-20 lines	10 business days
21 or more lines	ICB
Out of Hours Conversions	
Any quantity	ICB

10.1.3.4 Malheur will provide FOCs to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders for regular POTS or simple business End User Customers. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

10.1.3.5 For purposes of this Section, Malheur's normal business hours are 7:00 a.m. to 7:00 p.m., local time, Monday through Friday. CLEC may also request a Frame Due Time (FDT) of 5:00 a.m. as a normal business hour, Monday through Friday.

Requests for Frame Due Times other than the 5:00 a.m. or 7:00 a.m. to 7:00 p.m. normal business hours shall be considered an out of hours cut.

10.1.3.6 CLEC shall request service within the normal business hours by submitting a Local Service Request (LSR) and designating the requested Frame Due Time. Requests for Frame Due Times within normal business hours will be proactively managed by Malheur to ensure that the Frame Due Time is met.

#### 10.1.3.7 Out of Hours Cut

10.1.3.7.1 Out-of-hours cuts permit CLEC to select either a coordinated or non-coordinated cut for INP service outside of Malheur's normal business hours. For planning purposes, CLEC shall provide Malheur with a forecast of out-of-hours coordinated cuts at least two weeks prior to CLEC placing an order in a particular state. Forecasts should include the anticipated Frame Due Times and volumes to be ported out of hours.

10.1.3.7.2 CLEC shall request out of hours cuts by submitting a Local Service Request (LSR) and designating the desired FDT outside of the normal business hours. In the Remarks section of the LSR, CLEC must specify an Out of Hours cut and the type of cut (coordinated or non-coordinated).

10.1.3.7.3 The date and time for the coordinated cut may need to be negotiated between Malheur and CLEC because of system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same Switch (Switch contention). Because of this up-front coordination and FDT negotiation efforts, Firm Order Confirmation (FOC) of the FDT will require additional time. In the event that this situation would occur, Malheur will negotiate with CLEC to provide the FOC within a reasonable time frame.

#### 10.1.3.7.4 Non-Coordinated Out of Hours Cut

10.1.3.7.4.1 CLEC shall request out of hours non-coordinated cuts by submitting a LSR and designating a 1:00 a.m. FDT (Due Date) which is outside of the normal business hours. Non-coordinated cuts allow CLEC to request a Malheur FDT of 1:00 a.m. where the actual cut occurs between the hours of 1:00 a.m. and 7:00 a.m., with the cut completed by 7:30 a.m. of that Day (if the requested date is a business day, or by 7:30 a.m. of the next business day).

10.1.3.7.4.2 Conversion desk activities and escalation processes for non-coordinated out of hour cuts are accomplished during the business day prior to the cut.

10.1.3.7.4.3 CLEC will not incur additional charges for non-coordinated out of hours cuts.

#### 10.1.3.7.5 Coordinated Out of Hours Cut

10.1.3.7.5.1 CLECs shall request a coordinated out of hours cut

by submitting a LSR and designating the requested FDT.

10.1.3.7.5.2 Out of hours coordinated cuts will be managed by a Malheur project manager. Coordination of this effort requires an up-front internal planning session. Any changes to the original FDT will be negotiated with CLEC and will occur prior to issuing an FOC.

10.1.3.7.5.3 CLEC will incur additional charges for coordinated out of hours cuts.

#### 10.1.3.8 End User Customer Impacts

10.1.3.8.1 The INP Requestor is responsible for all dealings with and on behalf of its End User Customers, including all End User Customer account activity (e.g., End User Customer inquiries and complaints).

10.1.3.8.2 Each Party is responsible for obtaining a Proof of Authorization from its End User Customers who request a transfer of the End User Customer's telephone number from the other Party.

10.1.3.8.3 The INP Provider will work cooperatively with the INP Requestor to ensure a smooth End User Customer transition and to provide for coordination with other facilities (e.g., Loops).

10.1.3.8.4 If an End User Customer requests transfer of service from the INP Requestor back to the INP Provider, the INP Provider may rely on that End User Customer request to institute cancellation of the INP service. The INP Provider will provide at least 48 hours notice to the INP Requestor of the cancellation of INP service, and will work cooperatively with the INP Requestor to ensure a smooth End User Customer transition and to provide for coordination with other facilities (e.g., Loops).

10.1.3.8.5 The INP Requestor will submit to the INP Provider a disconnect order for each ported telephone number that is relinquished by the INP Requestor's End User Customers. Malheur will provide an electronic interface for the purpose of ordering INP service. This interface may be accomplished by either a GUI (Graphical User Interface) or EDI (Electronic Data Interchange).

#### 10.1.4 Maintenance and Repair

10.1.4.1 CLEC is responsible for its own End User Customers and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. End User Customers of CLEC will be instructed to report all cases of trouble to their Service Provider.

10.1.4.2 CLEC and Malheur will provide to their respective End User Customers the correct telephone numbers to call for access to their respective repair bureaus. CLEC and Malheur will provide their repair contact telephone numbers to one another on a reciprocal basis.

10.1.4.3 Malheur will work cooperatively with CLEC to resolve trouble reports

when the trouble condition has been isolated and found to be within a portion of the Malheur network. Malheur will perform standard tests to isolate and repair the trouble. For INP trouble reports, Malheur will not be responsible for testing the Unbundled Loop leased by CLEC.

10.1.4.4 The trouble ticket will be closed by the functional group that corrected the trouble. This group will also contact CLEC to inform them that the ticket has been closed. Current trouble codes and analysis codes will be entered to the trouble ticket.

## 10.1.5 Rate Elements

### 10.1.5.1 INP Rate Elements

In accordance with Commission requirements, Malheur recovers an appropriate allocation of its INP costs through charges to CLEC for each NXX Code assigned to CLEC. Per Commission Orders, a true-up will be completed semi-annually. The true-up is a mechanism for readjusting the monthly charge based on forecasted quantities, to account for actual quantities during the year. The Parties will comply with the FCC rules and Commission decisions on cost recovery for Interim Number Portability. Exhibit A of this Agreement contains Interim Number Portability rates.

10.1.5.1.1 In accordance with Commission requirements, Malheur recovers an appropriate allocation of its INP costs through charges to CLEC for each NXX Code assigned to CLEC. Per Commission Orders, a true-up will be completed semi-annually. The true-up is a mechanism for readjusting the monthly charge based on forecasted quantities, to account for actual quantities during the year.

10.1.5.1.2 Charges for Coordinated Out of Hours Cuts. Charges for coordinated out of hours cuts shall be based upon actual hours worked at Malheur's overtime rate, time and one-half rates for timeframes outside of Malheur's normal hours except for Sundays and Holidays. Charges for coordinated out of hours cuts on Sundays and Holidays shall be based upon Malheur's overtime premium rate, which is double time. Overtime rates will be multiplied by the number of Malheur personnel actively participating in the cut, multiplied by the number of hours required for the cut. Exhibit A of this Agreement contains overtime rates for coordinated out of hours cuts.

10.1.5.1.2.1 Malheur will schedule the appropriate number of employees prior to the cut, based upon information provided by CLEC. If such information requires modification during the cut and, as a result, non-scheduled employees are required, CLEC shall be charged a four hour minimum callout.

10.1.5.2 Switched Access Revenues. Malheur will comply with the FCC and Commission rules regarding the sharing of terminating Switched Access revenues. Once the End Office Switch is converted to long term number portability (LNP), CLEC has the ability to directly bill the Interexchange Carrier, and no sharing of terminating Switched Access revenues is required.

10.1.5.2.1 The Switched Access rate elements are identified in Malheur's Switched Access Tariff.

10.1.5.2.2 Malheur will use ARMIS data to determine the average Minutes of Use (MOU) by jurisdiction. ARMIS data is updated on a yearly basis.

10.1.5.2.3 The number of lines to be used in determining the amount of terminating Switched Access will be extracted from the Malheur corporate data warehouse once each month. This database contains billed information for posted orders.

10.1.5.2.4 The calculation of the terminating Switched Access charges, along with the appropriate data for the preceding month will be provided to CLEC to support the payment. Malheur will pay the pass through amounts to CLEC within one month. Disputes will be processed as though this credited amount were a billed amount under this Agreement.

## **10.2 Local Number Portability**

### **10.2.1 Description**

10.2.1.1 Local Number Portability (LNP) is defined by the FCC as the ability of users of Telecommunications Services to retain, at the same location, existing Telecommunications numbers without impairment of quality, reliability, or convenience when switching from one Telecommunications Carrier to another. Malheur will allow CLEC to port telephone numbers for its End User Customers in the same manner as Malheur ports telephone numbers for Malheur End User Customers. CLEC may port telephone numbers into and out of Malheur End Office Switches on behalf of an End User Customer using the FCC rules and industry guidelines as described in the following Sections.

10.2.1.2 Malheur uses the Location Routing Number (LRN) architecture. Under the LRN architecture, each End Office Switch is assigned a unique ten-digit LRN, the first six digits of which identify the location of that End Office Switch. The LRN technology is a triggering and addressing method which allows the re-homing of individual telephone numbers to other End Office Switches and ensures the proper routing of calls to ported telephone numbers through the use of a database and the signaling network. The LRN solution interrupts call processing through the use of an Advanced Intelligent Network (AIN) trigger, commonly referred to as the LRN trigger. During this interruption, a query is launched to the LNP database in the signaling network and the call is re-addressed using the LRN information for the ported telephone number. The LRN will route the call to the proper End Office Switch destination. The actual routing of the call with either the dialed telephone number, for calls to non-ported telephone numbers, or the LRN, for calls to ported telephone numbers, observes the rules, protocols and requirements of the existing Public Office Dialing Plan (PODP).

### **10.2.2 Terms and Conditions**

10.2.2.1 Malheur will provide Local Number Portability (LNP), also known as long-term number portability, in a non-discriminatory manner in compliance with the FCC's rules and regulations and the guidelines of the FCC's North American Numbering Council's (NANC) Local Number Portability Administration (LNPA) Working Group and the Industry Numbering Committee (INC) of the Alliance for Telecommunications Industry Solutions (ATIS). Unless specifically excluded in Section 10.2.2.6, all telephone

numbers assigned to an End User Customer are available to be ported through LNP. Mass calling events shall be handled in accordance with the industry's non-LRN recommendation (NANC's High Volume Call-In Networks dated February 18, 1998).

10.2.2.2 Each Party shall use reasonable efforts to facilitate the expeditious deployment of LNP. The Parties shall comply with the processes and implementation schedules for LNP deployment prescribed by the FCC. In accordance with industry guidelines, the publications of LNP capable End Office Switches and the schedule and status for future deployment will be identified in the Local Exchange Routing Guide (LERG).

10.2.2.3 In connection with the provision of LNP, the Parties agree to support and comply with all relevant requirements or guidelines that are adopted by the FCC, or that are agreed to by the Telecommunications industry as a national industry standard.

10.2.2.4 Malheur will coordinate LNP with Unbundled Loop cutovers in a reasonable amount of time and with minimum service disruption, pursuant to Unbundled Loop provisions identified in Section 9 of this Agreement. CLEC will coordinate with Malheur for the transfer of the Malheur Unbundled Loop coincident with the transfer of the End User Customer's service to Malheur in a reasonable amount of time and with minimum service disruption. For coordination with Loops not associated with Malheur's Unbundled Loop offering, CLEC may order the LNP managed cut, as described in Section 10.2.5.4.

10.2.2.4.1 Parties understand that LNP order activity must be coordinated with facilities cutovers in order to ensure that the End User Customer is provided with uninterrupted service. If the Party porting the telephone number experiences problems with its port or provision of its Loop, and needs to delay or cancel the port and any Loop disconnection, that Party shall notify the other Party immediately. Parties will work cooperatively and take prompt action to delay or cancel the port and any Loop disconnection in accordance with industry (LNPA's National Number Porting Operations Team), accepted procedures to minimize End User Customer service disruptions.

10.2.2.4.2 Parties shall transmit a port create subscription or port concurrence message to the NPAC, in accordance with the FCC's LNPA Working Group's guidelines. Malheur will routinely send a concurrence message within the time frames established by the industry.

10.2.2.5 The Parties agree to implement LNP within the guidelines set forth by the generic technical requirements for LNP as specified in Section 21 of this Agreement.

10.2.2.6 Neither Party shall be required to provide Local Number Portability for telephone numbers that are excluded by FCC rulings (e.g. 500 and 900 NPAs, 950 and 976 NXX number services).

10.2.2.7 After an End Office Switch becomes equipped with LNP, all NXXs assigned to that End Office Switch will be defined as portable, to the extent Technically Feasible, and translations will be changed in each Party's Switches so that the portable NXXs are available for LNP database queries. When an NXX is defined as portable, it will also be defined as portable in all LNP-capable End Office Switches that have direct

trunks to the End Office Switch associated with the portable NXX.

10.2.2.8 Each Party shall offer Local Number Portability to End User Customers for any portion of an existing DID block without being required to port the entire block of DID telephone numbers. Each Party shall permit End User Customers who port a portion of DID telephone numbers to retain DID service on the remaining portion of the DID telephone numbers.

10.2.2.9 At the time of porting a telephone number via LNP from Malheur, Malheur shall ensure that the LIDB entry for that telephone number is de-provisioned if the Malheur LIDB is not being used by CLEC.

10.2.2.10 Both Parties agree to follow the LNP End Office Switch request process established by the Parties and in compliance with industry guidelines.

10.2.2.11 NXX Migration, or Local Exchange Routing Guide Reassignment, reassigns the entire Central Office Code (NXX) to CLEC's End Office Switch if the code is used solely for one End User Customer. Where one Party has activated an entire NXX for a single End User Customer, or activated a substantial portion of an NXX for a single End User Customer with the remaining telephone numbers in the NXX either reserved for future use or otherwise unused, if such End User Customer chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned to an End Office Switch operated by the second Party through the NANP administrator. In addition, both Parties agree to cooperate in arranging necessary updates and industry notification in the LERG (and associated industry databases, routing tables, etc.). Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead-times (as identified in the LERG and the Central Office Code Administration guidelines) for movement of NXXs from one End Office Switch to another. Other applications of NXX migration will be discussed by the Parties as circumstances arise.

10.2.2.12 In connection with all LNP requests, the Parties agree to comply with the National Emergency Number Association (NENA) recommended standards for service provider Local Number Portability (NENA-02-011), as may be updated from time to time, regarding unlocking and updating End User Customers' telephone number records in the 911/Automatic Location Information (ALI) database. The Current Service Provider shall send the 911 unlock record on the completion date of the order to the 911 database administrator.

10.2.2.13 Porting of Reserved Numbers. The End User Customers of each Party may port Reserved Numbers from one Party to the other Party via LNP. Malheur will port telephone numbers previously reserved by the End User Customer via the appropriate retail Tariffs until these reservations expire. Malheur will reserve telephone numbers in accordance with the FCC's rules.

10.2.2.14 Limits on Subscriber Relocation. Malheur and CLEC agree that an End User Customer may geographically relocate at the same time as it ports its telephone number, using LNP, to the New Service Provider; provided, however, that the Current Service Provider may require that the End User Customer's relocation at the time of the port to the New Service Provider be limited to the geographic area represented by the NXX of the ported telephone number. The Current Service Provider may not impose a

relocation limitation on the New Service Provider or the New Service Provider's subscribers that is more restrictive than that which the Current Service Provider would impose upon its own subscribers with telephone numbers having the same NXX as the telephone number(s) being ported. In addition, the Current Service Provider may not impose any restrictions on relocation within the same Rate Center by a ported End User Customer while that End User Customer is served by the New Service Provider.

### **10.2.3 Service Management System**

10.2.3.1 Each Party shall sign the appropriate NPAC user agreement(s) and obtain certification from the appropriate NPAC administrator(s) that the Party or the Party's Service Order Administration (SOA) and Local Service Management System (LSMS) vendor(s) has systems and equipment that are compatible with the NPAC's established protocols and that the application of such systems and equipment is compatible with the NPAC.

10.2.3.2 Each Party shall cooperate to facilitate the administration of the SMS through the process prescribed in the documents referenced in Section 21.

### **10.2.4 Database and Query Services**

10.2.4.1 The LNP database provides the call routing information used by Malheur's End Office Switches and Tandem Switches to route CLEC's End User Customer's calls to a ported telephone number or to terminate calls to CLEC's End User Customers using a ported telephone number. Malheur shall perform default LNP queries where CLEC is unable to perform its own query. CLEC shall perform default LNP queries where Malheur is unable to perform its own query. Malheur query services and charges are defined in FCC Tariff #5, including End Office and Tandem Switch Default Query Charges which are contained in Tariff Section 13 (Miscellaneous Service) and Database Query Charges which are contained in Tariff Section 20 (CCSAC Service Applications).

10.2.4.2 For local calls to a NXX in which at least one (1) telephone number has been ported via LNP at the request of CLEC, the Party that owns the originating Switch shall query an LNP database as soon as the call reaches the first LNP-capable Switch in the call path. The Party that owns the originating Switch shall query on a local call to a NXX in which at least one (1) telephone number has been ported via LNP prior to any attempts to route the call to any other Switch. Prior to the first telephone number in a NXX being ported via LNP at the request of CLEC, Malheur may query all calls directed to the NXX, subject to the Billing provisions as discussed in Section 10.2.4.1 and provided that Malheur queries shall not adversely affect the quality of service to CLEC's End User Customers as compared to the service Malheur provides its own End User Customers.

10.2.4.3 A Party shall be charged for a LNP query by the other Party only if the Party to be charged is the N-1 Carrier and it was obligated to perform the LNP query but failed to do so. Parties are not obligated to perform the LNP query prior to the first port requested in a NXX.

10.2.4.4 On calls originating from a Party's network, the Party will populate, if Technically Feasible, the Jurisdiction Information Parameter (JIP) with the first six digits

of the originating LRN in the SS7 Initial Address Message.

10.2.4.5 Each Party shall cooperate in the process of porting telephone numbers from one Carrier to another so as to limit service outage for the ported End User Customer. Malheur shall update its LNP database from the NPAC SMS data within fifteen (15) minutes of receipt of a download from the NPAC SMS.

## 10.2.5 Ordering

10.2.5.1 Both Parties shall comply with ordering standards as developed by the industry and as described in Section 12 of this Agreement. LNP service is ordered via a Local Service Request and associated LNP forms. CLEC may order LNP either manually or through an electronic interface. The electronic gateway solution for ordering service is described in Section 12 of this Agreement.

10.2.5.2 Standard Due Date Intervals. Service intervals for LNP are described below. These intervals include the time for Firm Order Confirmation (FOC). Orders received after 7:00 p.m. (Mountain time) are considered the next business day. The following service intervals have been established for LNP:

	Telephone Numbers To Port	Interval*
<u>Simple</u> (1FR/1FB)	1-5	3 business days (includes FOC 24 hr interval)
	6-50	4 business days (includes FOC 24 hr interval)
	51 or more	Project Basis
<u>Complex</u> (PBX Trunks, ISDN, Centrex)	1-25	5 business days (includes FOC 24 hr interval)
	26 or more	Project Basis

\*Intervals for LNP with Unbundled Loops shall be governed by Section 9.2 of the Agreement.

10.2.5.3 Most LNP order activity is flow-through, meaning that the ten (10) digit unconditional trigger, or Line Side Attribute (LSA) trigger, can be set automatically. CLEC may request any Due Date/Frame Due Time (DD/FDT) where the trigger can be set automatically, although there may be some instances when Malheur or the Number Portability Administration Center/Service Management System (NPAC/SMS) will provide prior electronic notice of specific blocks of time which cannot be used as a DD/FDT due to scheduled maintenance or other circumstances. If the DD/FDT on a flow-through cut is outside Malheur's normal business hours for LNP, Malheur will have personnel available in the repair center to assist in the event that CLEC experiences problems

during the cut. In addition, Malheur allows CLEC to request a managed cut on a 24 X 7 basis in those situations where a cut would otherwise have been flow-through, but where CLEC has a business need to have Malheur personnel dedicated to the cut. The terms and conditions for managed cuts are described in 10.2.5.4.

10.2.5.3.1 Malheur will set the ten (10) digit unconditional trigger for telephone numbers to be ported, unless technically infeasible, by 11:59 p.m. (local time) on the business day preceding the scheduled port date. (A 10-digit unconditional trigger cannot be set for DID services in AXE10 and DMS10 End Office Switches thus managed cuts are required, at no charge.) The ten (10) digit unconditional trigger and End Office Switch translations associated with the End User Customer's telephone number will not be removed, nor will Malheur disconnect the End User Customer's Billing and account information, until 11:59 p.m. (local time) of the next business day after the Due Date. CLEC is required to make timely notifications of Due Date changes or cancellations by 8:00 p.m. (mountain time) on the Due Date through a supplemental LSR order. In the event CLEC does not make a timely notification, CLEC may submit a late notification to Malheur as soon as possible but in no event later than 12:00 p.m. (mountain time) the next business day after the Due Date to Malheur's Interconnect Service Center in the manner set forth below. For a late notification properly submitted, Malheur agrees to use its best efforts to ensure that the End User Customer's service is not disconnected prior to 11:59 p.m. of the next business day following the new Due Date or, in the case of a cancellation, no disruption of the End User Customer's existing service. Late notifications must be made by calling Malheur's Interconnect Service Center followed by CLEC submitting a confirming supplemental LSR order.

10.2.5.4 LNP Managed Cut With CLEC-Provided Loop: A managed cut permits CLEC to select a project managed cut for LNP. Managed cuts are offered on a 24 X 7 basis.

10.2.5.4.1 The date and time for the managed cut requires up-front planning and may need to be coordinated between Malheur and CLEC. All requests will be processed on a first come, first served basis and are subject to Malheur's ability to meet a reasonable demand. Considerations such as system downtime, Switch upgrades, Switch maintenance, and the possibility of other CLECs requesting the same FDT in the same End Office Switch (Switch contention) must be reviewed. In the event that any of these situations would occur, Malheur will coordinate with CLEC for an agreed upon FDT, prior to issuing the Firm Order Confirmation (FOC). In special cases where a FDT must be agreed upon, the interval to reach agreement will not exceed two (2) days. In addition, standard intervals will apply.

10.2.5.4.2 CLEC shall request a managed cut by submitting a Local Service Request (LSR) and designating this order as a managed cut in the remarks section of the LSR form.

10.2.5.4.3 CLEC will incur additional charges for the managed cut dependent upon the FDT. The rates are based upon whether the request is within Malheur's normal business hours or out of hours. Malheur's normal business hours are 7:00 a.m. to 7:00 p.m., End User Customer local time,

Monday through Friday. The rate for managed cuts during normal business hours is the standard rate. The rate for managed cuts out of hours, except for Sundays and Holidays, is the overtime rate. Sundays and Holidays are at premium rate.

10.2.5.4.4 Charges for managed cuts shall be based upon actual hours worked in one-half (½) hour increments. Exhibit A of this Agreement contains the rates for managed cuts. CLEC understands and agrees that in the event CLEC does not make payment for managed cuts, unless disputed as permitted under Section 5.4 of this Agreement, Malheur shall not accept any new LSR requests for managed cuts.

10.2.5.4.5 Malheur will schedule the appropriate number of employees prior to the cut, normally not to exceed three (3) employees, based upon information provided by CLEC. CLEC will also have appropriate personnel scheduled for the negotiated FDT. If CLEC's information is modified during the cut, 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 cut is either cancelled, or supplemented 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. If the cut is cancelled due to a Malheur error or a new Due Date is requested by Malheur within twenty-four (24) hours of the negotiated FDT, Malheur may be charged by CLEC one person three (3) hour minimum charge as set forth in Exhibit A.

10.2.5.4.6 In the event that the LNP managed cut conversion is not successful, CLEC and Malheur agree to isolate and fix the problem in a timeframe acceptable to CLEC or the End User Customer. If the problem cannot be corrected within an acceptable timeframe to CLEC or the End User Customer, CLEC may request the restoration of Malheur service for the ported End User Customer. Such restoration shall begin immediately upon request. If CLEC is in error then a supplemental order shall be provided to Malheur. If Malheur is in error, no supplemental order or additional order will be required of CLEC.

10.2.5.4.7 Malheur shall ensure that any LNP order activity requested in conjunction with a managed cut shall be implemented in a manner that avoids interrupting service to the End User Customer, including, without limitation, ensuring that the End User Customer's Malheur Loop will not be disconnected prior to confirmation that CLEC's Loop has been successfully installed.

## **10.2.6 Maintenance and Repair**

10.2.6.1 Each Party is responsible for its own End User Customers and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. End User Customers will be instructed to report all cases of trouble to their Current Service Provider.

10.2.6.2 Each Party will provide its respective End User Customers the correct telephone numbers to call for access to its respective repair bureau. Each Party will provide its repair contact telephone numbers to one another on a reciprocal basis.

10.2.6.3 Malheur will work cooperatively with CLEC to isolate and resolve trouble reports. When the trouble condition has been isolated and found to be within a portion of the Malheur network, Malheur will perform standard tests and isolate and repair the trouble within twenty-four (24) hours of receipt of the report.

10.2.6.4 Malheur will proactively test new Switch features and service offerings to ensure there are no problems with either the porting of telephone numbers or calls from Malheur End User Customers to CLEC End User Customers with ported telephone numbers or vice versa.

### **10.2.7 Rate Elements**

10.2.7.1 Malheur will comply with FCC and Commission rules on cost recovery for Local Number Portability.

## **10.3 911/E911 Service**

### **10.3.1 Description**

10.3.1.1 911 and E911 provides an End User Customer access to the applicable emergency service bureau, where available, by dialing a 3-digit universal telephone number (911).

10.3.1.2 Automatic Location Identification/Data Management System (ALI/DMS). The ALI/DMS database contains End User Customer information (including name, address, telephone number, and sometimes special information from the Current Service Provider or End User Customer) used to determine to which Public Safety Answering Point (PSAP) to route the call. The ALI/DMS database is used to provide more routing flexibility for E911 calls than Basic 911.

10.3.1.3 Basic 911 directly connects to the PSAP all 911 calls from one or more local exchange End Office Switches that serve a geographic area. E911 provides additional Selective Routing flexibility for 911 calls. E911 uses End User Customer data, contained in the ALI/DMS, to determine to which Public Safety Answering Point (PSAP) to route the call.

### **10.3.2 Terms and Conditions**

10.3.2.1 Malheur will provide nondiscriminatory access to the same Basic 911 or Enhanced 911 features, functions and services that Malheur provides to its End User Customers. E911 functions provided to CLEC shall be at the same level of accuracy and reliability as for such support and services that Malheur provides to its End User Customers for such similar functionality.

10.3.2.2 In counties where Malheur has obligations under existing agreements as the primary provider of the 911 system to the county, CLEC will participate in the provision of the 911 System as described in Section 10.3.

10.3.2.3 Malheur shall conform to all state regulations concerning emergency services.

10.3.2.4 Malheur shall route E911 calls to the appropriate PSAP.

10.3.2.5 Each Party will be responsible for those portions of the 911 system for which it has total control, including any necessary maintenance to each Party's portion of the 911 system.

10.3.2.6 Malheur will provide CLEC with the identification of the Malheur 911 controlling office that serves each geographic area served by CLEC.

10.3.2.7 Malheur will provide CLEC with the ten-digit telephone numbers of each PSAP agency, for which Malheur provides the 911 function, to be used by CLEC to acquire emergency telephone numbers for operators to handle emergency calls in those instances where CLEC's End User Customer dials "0" instead of "911". It shall be the responsibility of CLEC to verify or confirm the appropriate use of the contact information provided by Malheur with each PSAP prior to offering 911 calls or publication of such data.

10.3.2.8 If a third party is the primary service provider to a county, CLEC will negotiate separately with such third party with regard to the provision of 911 service to the county. All relations between such third party and CLEC are separate from this Agreement and Malheur makes no representations on behalf of the third party.

10.3.2.9 If CLEC is the primary service provider to the county, CLEC and Malheur will negotiate the specific provisions necessary for providing 911 service to the county and will include such provisions in an amendment to this Agreement.

10.3.2.10 CLEC is responsible to collect and remit to the state End User Customer taxes for 911 service.

10.3.2.11 CLEC is responsible for network management of its network components in compliance with the Network Reliability Council Recommendations and meeting the network standard of Malheur for the 911 call delivery.

10.3.2.12 The Parties shall provide a single point of contact to coordinate all activities under this Agreement.

10.3.2.13 Neither Party will reimburse the other for any expenses incurred in the provision of E911 services. All costs incurred by the Parties for 911/E911 services shall be billed to the appropriate PSAP.

10.3.2.14 Malheur's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. CLEC shall have non-discriminatory unbundled access to the E911 database, including the listings of other LECs for purposes of providing 911 services related to the public health, safety and welfare.

### **10.3.3 E911 Database Updates**

10.3.3.1 CLEC exchanges to be included in Malheur's E911 Database will be indicated via written notice to the appropriate 911 authority (state agency or PSAP administrator or county) and will not require an amendment to this Agreement.

10.3.3.2 Malheur's designated E911 database provider, an independent third party, will be responsible for maintaining the E911 database. Malheur, or its designated database provider, will provide to CLEC an initial copy of the most recent Master Street Address Guide (MSAG), and subsequent versions on a quarterly basis, at no charge. MSAGs provided outside the quarterly schedule will be provided and charged on an Individual Case Basis. The data will be provided in computer readable format. Malheur shall provide CLEC access to the Master Street Address Guide at a level of accuracy and reliability that is equivalent to the access Malheur provides to itself.

#### **10.3.4 E911 Database Updates for Facilities-Based CLECs**

10.3.4.1 Malheur will ensure that the 911 database entries for CLEC will be maintained with the same accuracy and reliability that Malheur maintains for Malheur's own End User Customers.

10.3.4.2 For Selective Routing table updates, facilities-based CLECs will negotiate directly with Malheur's database provider for the input and validation of End User Customer data into the Malheur Automatic Location Identification (ALI) database. CLEC will negotiate directly with the PSAP (or PSAP agency's) DMS/ALI provider for input of End User Customer data into the ALI database. In most cases the Selective Routing table updates and the ALI database will be managed by the same provider. CLEC assumes all responsibility for the accuracy of the data that CLEC provides for MSAG preparation and E911 Database operation.

10.3.4.3 If it is facilities-based, CLEC will provide End User Customer data to Malheur's agent for the Malheur ALI database utilizing NENA-02-010 Recommended Formats and Protocols For ALI Data Exchange standards. Malheur will furnish CLEC any variations to NENA recommendations required for ALI database input.

10.3.4.4 If it is facilities-based, CLEC will provide End User Customer data to Malheur's database provider for Malheur's ALI database that is MSAG valid and meets all components of the NENA-02-011 Recommended Data Standards for Local Exchange Carriers, ALI Service Providers and 9-1-1 Jurisdictions standard format, as specified by Malheur.

10.3.4.5 If it is facilities-based, CLEC will update its End User Customer records provided to Malheur's database provider for Malheur's ALI database to agree with the 911 MSAG standards for its service areas.

10.3.4.6 Malheur's E911 database administrator, an independent third party, shall resolve failed Local Number Portability migrate records in accordance with the NENA standard, NENA-02-011 Sections 22B.1-2, for Malheur records where Malheur is the donor company as defined in the NENA standard. The Malheur E911 database administrator will compare CLEC's (i.e., recipient company as defined in the NENA standard) failed migrate records to the Regional Number Portability Administration Center's (NPAC) database once each business day to determine if the migrate record (i.e., ported telephone number) has been activated by the recipient company. If the migrate record has been activated by CLEC in the NPAC, the record shall be unlocked and the migrate record processed. If, at the end of ten (10) business days, the NPAC database does not show the migrate record as activated or the record owner identification does not match, the migrate record will be rejected. The E911 database

administrator will send reports regarding CLEC's failed migrate records (i.e., 755 error code) and rejected migrate records (i.e., 760 error code) to CLEC or CLEC's designated database administrator. Malheur's E911 database administrator will also resolve failed migrate records for CLEC, if valid based on the NPAC database.

### **10.3.5 E911 Database Updates for Resale Based CLECs**

10.3.5.1 For resold services, Malheur, or its designated database provider, will provide updates to the ALI database in a manner that is at the same level of accuracy and reliability as such updates are provided for Malheur's End User Customers. For resold accounts, CLEC shall provide Malheur with accurate End User Customer location information to be updated to the ALI/DMS database. Malheur shall use its current process to update and maintain End User Customer information in the ALI/DMS database.

### **10.3.6 E911 Database Accuracy**

10.3.6.1 E911 Database accuracy shall be measured jointly by the PSAPs and Malheur's database provider in a format supplied by Malheur. The reports shall be forwarded to CLEC by Malheur's database provider when relevant and will indicate incidents when incorrect or no ALI data is displayed. The reports provided to CLEC shall contain CLEC-specific information regarding CLEC's accounts.

10.3.6.2 Each discrepancy report will be jointly researched by Malheur and CLEC. Corrective action will be taken immediately by the responsible Party.

10.3.6.3 Each Party providing updates to the E911 database will be responsible for the accuracy of its End User Customer records. Each Party providing updates specifically agrees to indemnify and hold harmless the other Party from any claims, damages, or suits related to the accuracy of End User Customer data provided for inclusion in the E911 Database.

10.3.6.4 Malheur and its vendor will provide non-discriminatory error correction for records submitted to the Automatic Location Identification (ALI) database. For resold accounts, if vendor detects errors, it will attempt to correct them. If vendor is unable to correct the error, vendor will contact Malheur for error resolution. For errors referred to Malheur, Malheur will provide the corrections in a non-discriminatory manner. If Malheur is unable to resolve the error, Malheur will contact the Resale-CLEC for resolution. In the case of facilities-based CLECs, the vendor will interface directly with CLEC to resolve record errors.

### **10.3.7 E911 Interconnection**

10.3.7.1 If required by CLEC, Malheur shall interconnect direct trunks from CLEC's network to the Basic 911 PSAP, or the E911 tandem. Such trunks may alternatively be provided by CLEC. If provided by Malheur, such trunks will be provided on a non-discriminatory basis. Malheur shall provide special protection identification for CLEC 911 circuits in the same manner as Malheur provides for its 911 circuits.

10.3.7.1.1 The Parties shall establish a minimum of two (2) dedicated trunks from CLEC's Central Office to each Malheur 911/E911 Selective Router (i.e., 911

Tandem Office) that serves the areas in which CLEC provides Exchange Service, for the provision of 911/E911 services and for access to all subtending PSAPs (911 Interconnection Trunk Groups). CLEC can order diverse routing for 911/E911 circuits, if facilities are available. When Malheur facilities are available, Malheur will comply with diversity of facilities and systems as ordered by CLEC. Where there is alternate routing of 911/E911 calls to a PSAP in the event of failures, Malheur shall make that alternate routing available to CLEC.

10.3.7.1.2 911 Interconnection Trunk Groups must be, at a minimum, DS0 level trunks configured as a 2-wire analog interface or as part of a digital (1.544 Mbps) interface. Either configuration must use Centralized Automatic Message Accounting (CAMA) type signaling with MF tones that will deliver Automatic Number Identification (ANI) with the voice portion of the call, or Signaling System 7 (SS7) if available (i.e., other signaling technology as available). All 911 Interconnection trunk groups must be capable of transmitting and receiving Baudot code necessary to support the use of Telecommunications Devices for the Deaf (TTY/TDDs).

10.3.7.1.3 Malheur shall begin restoration of 911/E911 trunking facilities immediately upon notification of failure or outage. Malheur must provide priority restoration of trunks or network outages on the same terms and conditions it provides itself. CLEC will be responsible for the isolation, coordination, and restoration of all 911 network maintenance problems to CLEC's demarcation. Malheur will be responsible for the coordination and restoration of all 911 network maintenance problems beyond the demarcation. Malheur repair service includes testing and diagnostic service from a remote location, dispatch of or in-person visit(s) of personnel. Where an on-site technician is determined to be required, a technician will be dispatched without delay. CLEC is responsible for advising Malheur of the circuit identification when notifying Malheur of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. Malheur will refer network trouble to CLEC if no defect is found in Malheur's network. The Parties agree that 911 network problem resolution will be managed in an expeditious manner at all times.

10.3.7.2 For CLEC-identified 911 trunk blockages, Malheur agrees to take corrective action using the same trunking service procedures used for Malheur's own E911 trunk groups.

10.3.7.3 The Parties will cooperate in the routing of 911 traffic in those instances where the ALI/ANI information is not available on a particular 911 call.

10.3.7.4 For facilities-based CLEC using its own switch(es), Malheur shall provide 911 Interconnection, including the provision of dedicated trunks from CLEC End Office Switch to the 911 control office, at Parity with what Malheur provides itself.

10.3.7.5 For CLEC's resale local exchange lines, Malheur shall provide access to the same 911 trunks used for Malheur's retail End User Customers which extend from the Malheur End Office Switch to the Basic 911 PSAP or the E911 Tandem Switch. CLEC access to such 911 trunks shall be on a shared, non-discriminatory basis.

### **10.3.8 E911 and Number Portability**

10.3.8.1 When a Malheur telephone number is ported out, receiving CLEC shall be responsible to update the ALI/DMS database. When CLEC's telephone number is ported in, Malheur shall be responsible to update the ALI/DMS database.

10.3.8.2 When Remote Call Forwarding (RCF) is used to provide number portability to the End User Customer and a remark or other appropriate field information is available in the database, the shadow or "forwarded-to" number and an indication that the number is ported shall be added to the End User Customer record by CLEC.

## **10.4 White Pages Directory Listings Service**

### **10.4.1 Description**

White Pages Directory Listings Service consists of Malheur placing the names, addresses and telephone numbers of CLEC's End User Customers in Malheur's Listings database, based on End User Customer information provided to Malheur by CLEC. Malheur is authorized to use CLEC End User Customer Listings as noted below.

### **10.4.2 Terms and Conditions**

10.4.2.0 White Pages Directory Listings Service is provided to reseller CLEC with CLEC's resold local exchange lines, and such Listings include terms and conditions (except prices) for Listings in Malheur's applicable product Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings. To the extent, however, that a conflict arises between the terms and conditions of the Tariff, catalog, price list, or other retail Telecommunications Services offering and this Agreement, this Agreement shall be controlling. White Pages Directory Listings Service is available to facilities-based CLEC as described in this Section.

10.4.2.1 Reseller CLEC and facilities-based CLEC using Malheur's switching services to provide local Exchange Service will provide, and facilities-based CLEC using its own or a third party's Switch(es) may provide, to Malheur, in standard format, by mechanized or by manual transmission to Malheur, its primary, premium and privacy Listings.

10.4.2.1.1 Malheur will accept one (1) primary Listing for each main telephone number belonging to CLEC's resale and facilities-based End User Customers at no monthly recurring charge.

10.4.2.1.2 CLEC will be charged for its resale premium Listings (e.g., additional, foreign, cross-reference) and privacy Listings (i.e., nonlisted and nonpublished) at Malheur's General Exchange Listing Tariff rates, less the wholesale discount, if any, as described in Exhibit A. CLEC will be charged for its facilities-based premium Listings (e.g., additional, foreign, cross-reference) and privacy Listings (i.e., nonlisted and nonpublished) at market-based prices contained in Exhibit A. Primary Listings and other types of Listings are defined in the Malheur General Exchange Tariffs.

10.4.2.2 Intentionally Left Blank.

10.4.2.3 Information on submitting and updating Listings is available in "Facility Based CLECs and Reseller/Unbundled Network CLECs Directory Listings User Document." Malheur will furnish CLEC Listings format specifications. Directory publishing schedules and deadlines for Malheur's official directory publisher will be provided to CLEC.

10.4.2.4 If CLEC provides its End User Customer's Listings to Malheur, CLEC grants Malheur access to CLEC's End User Customer Listings information for use in its Directory Assistance Service as described in Section 10.5, and in its Directory Assistance List Service as described in Section 10.6, and for other lawful purposes, except that CLEC's Listings supplied to Malheur by CLEC and marked as nonpublished or nonlisted Listings shall not be used for marketing purposes subject to the terms and conditions of this Agreement. Malheur will incorporate CLEC End User Customer Listings in the Directory Assistance Database. Malheur will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Malheur. Should Malheur cease to be a Telecommunications Carrier, by virtue of a divestiture, merger or other transaction, this access grant automatically terminates.

10.4.2.5 CLEC End User Customer Listings will be treated the same as Malheur's End User Customer Listings. Prior written authorization from CLEC, which authorization may be withheld, shall be required for Malheur to sell, make available, or release CLEC's End User Customer Listings to directory publishers, or other third parties other than Directory Assistance providers. No prior authorization from CLEC shall be required for Malheur to sell, make available, or release CLEC's End User Customer Directory Assistance Listings to Directory Assistance providers. Listings shall not be provided or sold in such a manner as to segregate End User Customers by Carrier. Malheur will not charge CLEC for updating and maintaining Malheur's Listings databases. CLEC will not receive compensation from Malheur for any sale of Listings by Malheur as provided for under this Agreement.

10.4.2.6 To the extent that state Tariff(s) limit Malheur's liability with regard to Listings, the applicable state Tariff(s) is incorporated herein and supersedes the Limitation of Liability section of this Agreement with respect to Listings only.

10.4.2.7 Malheur is responsible for maintaining Listings, including entering, changing, correcting, rearranging and removing Listings in accordance with CLEC orders.

10.4.2.8 Malheur provides non-discriminatory appearance and integration of white pages directory Listings for all CLEC's and Malheur's End User Customers. All requests for white pages directory listings, whether for CLEC or Malheur End User Customers, follow the same processes for entry into the Listings database.

10.4.2.9 Malheur will take reasonable steps in accordance with industry practices to accommodate CLEC's nonpublished and nonlisted Listings provided that CLEC has supplied Malheur the necessary privacy indicators on such Listings.

10.4.2.10 CLEC's white pages directory listings will be in the same font and size as Listings for Malheur End User Customers, and will not be separately classified.

10.4.2.11 Malheur processes for publication of white pages Directory Listings will make no distinction between CLEC's and Malheur's subscribers. CLEC's Listings will be provided with the same accuracy and reliability as Malheur's End User Customer Listings. Malheur will ensure CLEC's Listings provided to Malheur are included in the white pages directory published on Malheur's behalf using the same methods and procedures, and under the same terms and conditions, as Malheur uses for its own End User Customer Listings.

10.4.2.12 For CLEC's End User Customers whose Listings CLEC provides to Malheur for submission to its official directory publisher, Malheur shall ensure its third party publisher distributes appropriate alphabetical and classified directories (white and yellow pages) and recycling services to such CLEC End User Customers at Parity with Malheur End User Customers, including providing directories a) upon establishment of new service; b) during annual mass distribution; and c) upon End User Customer request.

10.4.2.13 CLEC shall use commercially reasonable efforts to ensure that Listings provided to Malheur are accurate and complete. All third party Listings information is provided AS IS, WITH ALL FAULTS. CLEC further represents that it shall review all Listings information provided to Malheur, including End User Customer requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.4.2.14 Intentionally Left Blank.

10.4.2.15 CLEC shall be solely responsible for knowing and adhering to state laws or rulings regarding Listings and for supplying Malheur with the applicable Listing information. Malheur understands that certain states, including, but not necessarily limited to, Minnesota, South Dakota, and Washington, have enacted statutes that impose certain requirements upon the provision of wireless listings, and CLEC represents and warrants that listings CLEC submits to Malheur reflect and are provided in full compliance with applicable laws and regulations, including but not limited to, laws and regulations applicable to wireless listings.

10.4.2.16 CLEC agrees to provide to Malheur its End User Customer names, addresses and telephone numbers in a standard mechanized or manual format, as specified by Malheur.

10.4.2.17 CLEC will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide Malheur the means of identifying Listings ownership.

10.4.2.18 Prior to placing Listings orders on behalf of End User Customers, CLEC shall be responsible for obtaining, and have in its possession, Proof of Authorization (POA), as set forth in Section 5.3 of this Agreement.

10.4.2.19 For Listings that CLEC submits to Malheur, Malheur will provide monthly Listing verification proofs that provide the data to be displayed in the published white pages directory and available on Malheur's Directory Assistance Service. Verification proofs containing nonpublished and nonlisted Listings are also available upon request on the same monthly schedule.

10.4.2.20 Malheur will provide CLEC a reasonable opportunity to verify the

accuracy of its Listings to be included in the white pages directory and in Malheur's Directory Assistance Service.

10.4.2.21 CLEC may review and if necessary edit its white page Listings prior to the close date for publication in the directory.

10.4.2.22 CLEC is responsible for all dealings with, and on behalf of, CLEC's End User Customers, including:

10.4.2.22.1 All End User Customer account activity (e.g., End User Customer queries and complaints);

10.4.2.22.2 All account maintenance activity (e.g., additions, changes, issuance of orders for Listings to Malheur);

10.4.2.22.3 Determining privacy requirements and accurately coding the privacy indicators for CLEC's End User Customer information (if End User Customer information provided by CLEC to Malheur does not contain a privacy indicator, no privacy restrictions will apply); and

10.4.2.22.4 Any additional services requested by CLEC's End User Customers.

10.4.2.23 Pursuant to Sections 222 (a), (b), (c), (d), and (e) of the Telecommunications Act, Malheur will provide subscriber list information gathered in Malheur's capacity as a provider of local Exchange Service on a timely basis, under non-discriminatory and reasonable rates, terms and conditions to CLEC upon request for the purpose of publishing directories in any format. Rates may be subject to federal or state law or rules, as appropriate. Upon request by CLEC, Malheur shall enter into negotiations with CLEC for CLEC's use of subscriber list information for purposes other than publishing directories, and Malheur and CLEC will enter into a written contract if agreement is reached for such use.

10.4.2.23.1 Malheur shall use commercially reasonable efforts to ensure that its retail End User Customer Listings provided to CLEC are accurate and complete. Any third party Listings are provided AS IS, WITH ALL FAULTS. Malheur further represents that it shall review all its retail End User Customer Listings information provided to CLEC including End User Customer requested restrictions on use, such as nonpublished and nonlisted restrictions.

10.4.2.24 Malheur represents and warrants that any arrangement for the publication of white pages Directory Listings with an Affiliate or contractor, requires such Affiliate or contractor to publish the Directory Listings of CLEC contained in Malheur's Listings database so that CLEC's Directory Listings are non-discriminatory in appearance and integration, and have the same accuracy and reliability that such Affiliate or contractor provides to Malheur's End User Customers.

10.4.2.25 Malheur further agrees that any arrangements for the publication of white pages Directory Listings with an Affiliate or contractor shall require such Affiliate or contractor to include in the customer guide pages of the white pages directory, a notice that End User Customers should contact their Current Service Provider to request any

modifications to their existing Listing or to request a new Listing.

10.4.2.26 Malheur agrees that any arrangement with an Affiliate or contractor for the publication of white pages directory Listings shall require such Affiliate or contractor to provide CLEC space in the customer guide pages of the white pages directory for the purpose of notifying End User Customers how to reach CLEC to: (1) request service; (2) contact repair service; (3) dial Directory Assistance; (4) reach an account representative; (5) request buried cable locate service; and (6) contact the special needs center for End User Customers with disabilities.

10.4.2.27 If CLEC submits its End User Customer Listings to Malheur through a service bureau or other type of third party (agent), CLEC and the agent shall execute a Letter of Authorization (LOA), in a form acceptable to Malheur, that shall include, but not be limited to, the following terms:

10.4.2.27.1 That the agent is authorized by CLEC to submit Listings to Malheur on its behalf and to work with Malheur in resolving any issues surrounding its Listing submissions; and

10.4.2.27.2 That the agent will comply with all terms and conditions of this Agreement in submitting CLEC's End User Customers' Listings to Malheur.

10.4.2.27.3 CLEC's use of an agent in submitting its End User Customers' Listings to Malheur shall not alter CLEC's obligations under this Agreement and CLEC shall remain primarily liable for covenants and responsibilities under this Agreement.

### **10.4.3 Rate Elements**

The following rate elements apply to white pages directory Listings and are contained in Exhibit A of this Agreement.

10.4.3.1 Primary Listings; and

10.4.3.2 Premium and Privacy Listings.

### **10.4.4 Ordering Process**

10.4.4.1 Malheur provides training on white pages directory Listings requests and submission processes. The ordering process is similar to the service ordering process.

10.4.4.2 CLEC Listings can be submitted for inclusion in Malheur white pages directories according to the directions in the Malheur Listings User Documents for Facility-Based and Reseller CLECs, which is available on-line through the PCAT (<http://www.qwest.com/wholesale/pcat/>) or will be provided in hard copy to CLEC upon request. Initial information and directions are available in the PCAT.

10.4.4.3 CLEC can submit the OBF forms incorporated in the Local Service Request via the IMA-EDI, IMA-GUI, or by facsimile.

## 10.5 Directory Assistance Service

### 10.5.1 Description

10.5.1.1 Directory Assistance Service is a voice service that Malheur provides to its own End User Customers, reseller and/or facilities-based CLEC, and to other Telecommunications Carriers. Directory Assistance Service provided to CLEC includes non-discriminatory access to Malheur's Directory Assistance centers, services, and Directory Assistance Databases. Directory Assistance Service provides voice callers published and nonlisted listing information, which is comprised of name and telephone number, and address if available, as contained in Malheur's then-current Directory Assistance Database and in the national Directory Assistance Database that is accessed by Malheur. Directory Assistance Service is available with CLEC-specific branding, generic branding and with Directory Assistance Call Completion service options, where available. If facilities-based CLEC chooses to access Malheur's Directory Assistance Service, it is provided to CLEC under this Agreement pursuant to Section 251(b)(3) of the Act. As such, the pricing requirements of Section 252(d)(1) of the Act are not applicable.

#### 10.5.1.1.1 Directory Assistance Service.

10.5.1.1.1.1 Local Directory Assistance Service. Provides CLEC's End User Customers published and non-listed Listing information within the caller's LATA that are included in Malheur's then-current Directory Assistance Database.

10.5.1.1.1.2 National Directory Assistance Service. Provides CLEC's End User Customers published and nonlisted listing information from the database of the national Directory Assistance Services vendor selected and accessed by Malheur.

10.5.1.1.1.3 Call Branding Service. Provides CLEC Local and national Directory Assistance Service that is branded with the brand of CLEC (CLEC-specific branding), where Technically Feasible, or with a generic brand. CLEC-specific Call Branding announces CLEC's name to CLEC's End User Customer at the start and completion of the call. Generic branding does not announce any provider's name. CLEC-specific Call Branding and generic branding are optional services available to CLEC.

- a) Front End CLEC-specific Call Branding - Announces CLEC's name to CLEC's End User Customer at the start of the call.
- b) Back End CLEC-specific Call Branding - Announces CLEC's name to CLEC's End User Customer at the completion of the call.
- c) Intentionally Left Blank.
- d) Malheur will record CLEC's specific brand message.

10.5.1.1.1.4 Call completion service allows CLEC's End User Customers' local/intraLATA calls to be completed, where available.

10.5.1.1.2 Intentionally Left Blank.

10.5.1.1.3 Intentionally Left Blank.

## 10.5.2 Terms and Conditions

10.5.2.0 Directory Assistance Service accessed over CLEC's resold local exchange lines includes terms and conditions (except prices) for Directory Assistance Service in Malheur's applicable product Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings. To the extent, however, that a conflict arises between the terms and conditions of the Tariff, catalog, price list, or other retail Telecommunications Services offering and this Agreement, this Agreement shall be controlling. Directory Assistance Service is available to facilities-based CLEC as described in this Section unless otherwise noted. If facilities-based CLEC chooses to access Malheur's Directory Assistance Service, it is provided to CLEC under this Agreement pursuant to Section 251(b)(3) of the Act. As such, the pricing requirements of Section 252(d)(1) of the Act are not applicable. Directory Assistance Service is available to CLEC as a facilities-based provider at the market-based prices contained in Exhibit A.

10.5.2.1 Intentionally Left Blank.

10.5.2.2 Malheur's Directory Assistance Database contains only those published and non-listed telephone number Listings obtained by Malheur from its own End User Customers and other Telecommunications Carriers.

10.5.2.3 Malheur will provide access to Directory Assistance Service for facilities-based CLEC using its own or a third party's Switch(es) via dedicated multi-frequency (MF) operator service trunks. CLEC may purchase operator service trunks from Malheur or provide them itself. These operator service trunks will be connected directly to a Malheur Directory Assistance host or remote Switch. CLEC will be required to order or provide at least one (1) operator services trunk for each NPA served.

10.5.2.4 Malheur will perform Directory Assistance Services for CLEC in accordance with operating methods, practices, and standards in effect for all Malheur End User Customers. Malheur will provide the same priority of handling for CLEC's End User Customer calls to Malheur's Directory Assistance Service as it provides for its own End User Customer calls. Calls to Malheur's Directory Assistance Service are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Malheur End User Customers.

10.5.2.5 CLEC-specific Call Branding for Directory Assistance requires recording CLEC's name.

10.5.2.6 Intentionally Left Blank.

10.5.2.7 Intentionally Left Blank.

10.5.2.8 Reseller CLEC's End User Customers will use the same dialing pattern to access Directory Assistance Service as used by Malheur's End User Customers (i.e., 411, 555-1212, or NPA+555-1212).

10.5.2.9 Facilities-based CLEC using its own or a third party's Switch(es) may choose to have its End User Customers dial a unique number or use the same dialing pattern as Malheur End User Customers use to access Malheur Directory Assistance Service.

10.5.2.10 Malheur will timely enter into its directory assistance database updates of CLEC's Listings that CLEC provides to Malheur as described in Section 10.4. Malheur will incorporate CLEC End User Customer Listings in the Directory Assistance Database. Malheur will incorporate CLEC's End User Customer Listings information in all existing and future Directory Assistance applications developed by Malheur. Malheur will implement quality assurance procedures such as random testing for listing accuracy. Malheur will identify itself to End User Customers calling its Directory Assistance Service provided for itself either by company name or operating company name or operating company number so that End User Customers have a means to identify with whom they are dealing.

10.5.2.10.1 In accordance with Section 18, where CLEC supplies its Listings to Malheur, CLEC may request a comprehensive audit of Malheur's use of CLEC's Listings for Directory Assistance Service. In addition to the terms specified in Section 18, the following also apply: as used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the Listings for Directory Assistance Service provided hereunder and such other Party's performance of its obligations under this Agreement. CLEC may perform up to two (2) audits per twelve (12) month period commencing with the Effective Date of this Agreement of Malheur's use of CLEC's Listings in Malheur's Directory Assistance Service. CLEC shall be entitled to "seed" or specially code some or all of the Listings for Directory Assistance Service that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Agreement.

10.5.2.11 Malheur shall use CLEC's Listings supplied to Malheur by CLEC under the terms of this Agreement for purposes of providing Directory Assistance Service and for other lawful purposes, except that CLEC's Listings supplied to Malheur by CLEC and marked as nonpublished or nonlisted Listings shall not be used for marketing purposes, subject to the terms and conditions of this Agreement.

### **10.5.3 Rate Elements**

The following rate elements apply to Directory Assistance Service. Directory Assistance Service is provided to CLEC for resale with resold local exchange lines at the Malheur retail price less the wholesale discount contained in Exhibit A, if any. Directory Assistance Service is provided to CLEC as a facilities-based provider at the market-based prices contained in Exhibit A.

10.5.3.1 A per-call rate applies for Local Directory Assistance and for national Directory Assistance Services.

10.5.3.2 Intentionally Left Blank

10.5.3.3 A per-call rate is applicable for call completion service.

#### **10.5.4 Ordering Process**

CLEC will order Directory Assistance Service by completing the questionnaire entitled "Malheur Operator Services/Directory Assistance Questionnaire for Competitive Local Exchange Carriers." This questionnaire may be obtained from CLEC's Malheur account manager.

#### **10.5.5 Billing**

10.5.5.1 Malheur will track and bill CLEC for the number of calls placed to Malheur's Directory Assistance Service by CLEC's End User Customers as well as for the number of requests for call completion service.

10.5.5.2 For purposes of determining when CLEC is obligated to pay the per call rate, the call shall be deemed made and CLEC shall be obligated to pay when the call is received by the operator services Switch. An End User Customer may request and receive no more than two (2) telephone numbers per Directory Assistance call. Malheur will not credit, rebate or waive the per call charge due to any failure to provide a telephone number.

10.5.5.3 Call completion service will be charged at the per call rate when the End User Customer completes the required action (i.e., "press the number one," "stay on the line," etc.).

### **10.6 Directory Assistance List**

#### **10.6.1 Description**

10.6.1.1 Directory Assistance List (DAL) information consists of name, address and telephone number information for all End User Customers of Malheur and other LECs that are contained in Malheur's Directory Assistance Database and, where available, related elements required in the provision of Directory Assistance Service to CLEC's End User Customers. No prior authorization from CLEC shall be required for Malheur to sell, make available, or release CLEC's End User Customer Directory Assistance Listings to Directory Assistance providers. In the case of End User Customers who have non-published Listings, Malheur shall provide the End User Customer's local Numbering Plan Area (NPA), address, and an indicator to identify the non-published status of the Listing; however, Malheur will not provide the non-published telephone number in DAL information. DAL information includes privacy and use restriction indicators as requested by Malheur's retail End User Customers and by Carriers. DAL is provided pursuant to Section 251(b)(3) of the Act. As such, the pricing requirements of Section 252(d)(1) of the Act are not applicable. DAL shall be provided to CLEC at market-based prices contained in Exhibit A.

10.6.1.2 Malheur will provide DAL information via initial loads and daily updates by means of Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. Malheur will provide all changes, additions or deletions to the DAL information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

10.6.1.3 DAL information shall specify whether the Malheur End User Customer is a residential, business, or government subscriber, and the Listings of other Carriers will specify such information where it has been provided on the Carrier's Listing order.

10.6.1.4 In the event CLEC requires a reload of DAL information from Malheur's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the rate specified in Exhibit A.

10.6.1.5 Malheur and CLEC will cooperate in the designation of a location to which the data will be provided.

## **10.6.2 Terms and Conditions**

10.6.2.1 If CLEC purchases use of Malheur's DAL information under this Agreement, Malheur grants to CLEC, as a competing provider of telephone Exchange Service and telephone toll service, access to DAL information for purposes of providing Directory Assistance Services and for other lawful purposes, including directory publishing in any format or medium, under the terms and conditions of this Agreement. CLEC is solely responsible for its lawful use of DAL information obtained under this Agreement pursuant to Section 251(b)(3) of the Act, including use of such information only for purposes permitted, or not prohibited by, the Act, federal and state laws, rules, and regulations, the FCC's orders, rules and regulations, and the Commission's orders, rules, and regulations. As it pertains to the use of DAL information in this Agreement, "Directory Assistance Service" shall mean the provision, by CLEC, via a live operator or mechanized system, of telephone number and address information for an identified name or the name and/or address for an identified telephone number. Should CLEC cease to be a Telecommunications Carrier, a competing provider of telephone Exchange Service, or telephone toll service, this access grant automatically terminates.

10.6.2.1.1 Malheur shall make commercially reasonable efforts to ensure that Listings belonging to Malheur retail End User Customers provided to CLEC in Malheur's DAL information are accurate and complete. All third party DAL information is provided AS IS, WITH ALL FAULTS. Malheur further represents that it shall review all of its End User Customer Listings information provided to CLEC, including End User Customer requested restrictions on use, such as non-published and non-listed restrictions.

10.6.2.1.2 If CLEC purchases use of Malheur's DAL information under this Agreement, Malheur shall notify CLEC of any directive from Carriers, whose listings may be included in Malheur's DAL information, which prohibits use of their DAL information for purposes of directory publishing. CLEC that purchases use of Malheur's DAL information shall not include such Carrier's Listings that may be included in the DAL information in any directory it publishes or causes to be published, in any format or medium.

10.6.2.1.3 Listings included in Malheur's DAL information and marked to indicate a restriction on use, or to indicate a restriction on inclusion of Listing information in Directory Assistance Service applications and/or in published directories, shall be used by CLEC only in a manner that is consistent with each such restriction and that does not violate a restriction, including the following.

10.6.2.1.3.1 Restriction indicators on DAL information include:

- Privacy indicators, including nonpublished and nonlisted indicators;
- No solicitation indicators;
- Omit from address directories indicators; and
- Omit from telemarketing, direct mail, and e-mail lists indicators.

10.6.2.1.3.2 Nonlisted Listings and nonpublished Listings shall not be included in any directory produced in any format or medium.

10.6.2.1.3.3 Nonpublished Listings information provided in DAL information shall not be used for any purpose except for providing Directory Assistance Services. When used in Directory Assistance Services applications, nonpublished Listings shall not be used for any purpose other than in matching a search query. The nonpublished subscriber name and address, while supplied to CLEC in DAL information, shall not be provided to any person other than the operator responding to the End User Customer Directory Assistance Services query.

10.6.2.2 If CLEC purchases use of DAL information under this Agreement, CLEC will obtain and timely enter into its Directory Assistance Database daily updates of the DAL information, will implement quality assurance procedures such as random testing for Directory Assistance Listing accuracy, and will identify itself to End User Customers calling its Directory Assistance Service either by company name or operating company number so that End User Customers have a means to identify with whom they are dealing.

10.6.2.3 Intentionally Left Blank.

10.6.2.4 Malheur shall retain all right, title, interest and ownership in and to the DA Listing information it provides hereunder. CLEC acknowledges and understands that while it may disclose the names, addresses, and telephone numbers (or an indication of non-published status) of Malheur's End User Customers to a third party calling its Directory Assistance for such information, the fact that such End User Customer subscribes to Malheur's Telecommunications Services is Confidential and Proprietary Information and shall not be disclosed to any third party.

10.6.2.5 Each Party shall take commercially reasonable and prudent measures to prevent unlawful use of Malheur's DAL information at least equal to the measures it takes to protect its own Confidential and Proprietary Information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to Malheur's DAL information when contained in any database.

10.6.2.5.0 CLEC shall include in its sublicense agreement with directory publishers, at a minimum; 1) a restriction limiting use of DAL information to purposes of directory publishing; 2) a requirement that the directory publisher

abide by all privacy indicators in any directories published in any format or medium; 3) Malheur as third party beneficiary; and 4) the following language:

Publisher shall not sublicense, copy, or allow any third party, with the exception of End User Customers and corporate affiliates for purposes associated with the use of directories and for publishing directories, to access, download, copy or use DAL information, or any portions thereof, or any information extracted there from. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of the DAL information at least equal to the measures it takes to protect its own confidential and proprietary information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to the DAL information when contained in any database.

10.6.2.5.0.1 Malheur shall have the right to review CLEC's form sublicense agreement and CLEC shall not make changes to that form which will materially affect Malheur's rights under this Agreement.

10.6.2.5.1 Unauthorized use of Malheur's DAL information, or any disclosure to a third party of the fact that an End User Customer, whose Listing is furnished in the DA List, subscribes to Malheur's, another Local Exchange Carrier's, Reseller's or CMRS's Telecommunications Services shall be considered a material breach of this Agreement and shall be resolved under the Dispute Resolution provisions of this Agreement.

10.6.2.6 Within five (5) Days after the expiration or earlier termination of this Agreement, CLEC shall (a) return and cease using any and all DAL information which it has in its possession or control, (b) extract and expunge any and all copies of such DAL information, any portions thereof, and any and all information extracted therefrom, from its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to Malheur from an officer that all of the foregoing actions have been completed. A copy of this certification may be provided to third party Carriers if the certification pertains to such Carriers' DAL information contained in Malheur's database.

10.6.2.7 CLEC is responsible for ensuring that it has proper security measures in place to protect the privacy of the End User Customer information contained within the DAL information. CLEC must remove from its database any telephone number for an End User Customer whose Listing has become non-published when so notified by Malheur.

10.6.2.8 Audits -- In accordance with Section 18, Malheur may request a comprehensive audit of CLEC's use of the DAL information. In addition to the terms specified in Section 18, the following also apply:

10.6.2.8.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DAL information provided hereunder and such other Party's performance of its obligations under this Agreement. Either Party (the Requesting Party) may perform up to two (2) Audits per twelve (12) month period commencing with the Effective Date of this Agreement. Malheur

shall be entitled to "seed" or specially code some or all of the DAL information that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Section 10.6.

10.6.2.8.2 All paper and electronic records will be subject to Audit.

10.6.2.9 CLEC recognizes that certain Carriers who have provided DAL information that is included in Malheur's database may be third party beneficiaries of this Agreement for purposes of enforcing any terms and conditions of the Agreement other than payment terms with respect to their DAL information.

10.6.2.9.1 CLEC indemnifies Malheur for any and all 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) raised by these Carriers, whether formal or informal and will handle all communications with these Carriers regarding this matter.

10.6.2.10 Malheur will provide a non-discriminatory process and procedure for contacting End User Customers with non-published telephone numbers in emergency situations for non-published telephone numbers that are included in Malheur's Directory Assistance Database. Such process and procedure will be available to CLEC for CLEC's use when CLEC provides its own Directory Assistance Service and purchases Malheur's DAL product.

### **10.6.3 Rate Elements**

Recurring and nonrecurring rate elements for DAL information are described below and rates are contained in Exhibit A of this Agreement.

10.6.3.1 Initial Database Load -- A "snapshot" of data in the Malheur DAL information database or portion of the database at the time the order is received.

10.6.3.2 Reload -- A "snapshot" of the data in the Malheur DAL information database or portion of the database required in order to refresh the data in CLEC's database.

10.6.3.3 Daily Updates -- Daily change activity affecting DAL information in the Listings database.

10.6.3.4 One-Time Set-Up Fees -- Charges for special database loads.

10.6.3.5 Output Charges -- Media charges resulting from the electronic transmission of the DAL information.

### **10.6.4 Ordering**

10.6.4.1 CLEC may order the initial DAL information load or update files for Malheur's local Exchange Service areas in its 14 state operating territory or, on a state-specific basis, or, where Technically Feasible, CLEC may order the initial DAL

information load or update files by Malheur White Page Directory Code or NPA.

10.6.4.2 Special requests for data at specific geographic levels (such as NPA) must be negotiated in order to address data integrity issues.

10.6.4.3 CLEC shall use the DAL Order Form found in the PCAT.

## **10.7 Toll and Assistance Operator Services**

### **10.7.1 Description**

10.7.1.1 Toll and assistance operator services (operator services) are a family of offerings that assist CLEC's resale and facilities-based End User Customers in making and receiving EAS/local and IntraLATA toll calls. Operator services provided to CLEC include non-discriminatory access to Malheur operator service centers, services, and personnel. If facilities-based CLEC using Malheur's, its own, or a third party's Switch(es) chooses to access Malheur's operator services, they are provided to CLEC under this Agreement pursuant to Section 251(b)(3) of the Act. As such, the pricing requirements of Section 252(d)(1) of the Act are not applicable. Operator services shall be provided to CLEC as a facilities-based provider at the market-based rates contained in Exhibit A.

10.7.1.1.1 EAS/Local and IntraLATA Assistance. Assists CLEC End User Customers requesting help or information on making and receiving EAS/local and IntraLATA toll calls, connects CLEC End User Customers to Malheur's Directory Assistance Service, and provides other information and guidance, including referral to the business office and repair, as may be consistent with Malheur's customary practice for providing End User Customer assistance.

10.7.1.1.2 Intentionally Left Blank.

10.7.1.1.3 Emergency Assistance. Provides assistance for handling CLEC's End User Customer's EAS/local and IntraLATA toll calls to emergency agencies, including but not limited to, police, sheriff, highway patrol and fire. CLEC is responsible for providing Malheur with the appropriate emergency agency numbers and updates.

10.7.1.1.4 Busy Line Verification (BLV) is performed when CLEC's End User Customers request assistance from the operator bureau to determine if a called line is in use. The operator will not complete the call for the calling party initiating the BLV inquiry. Only one BLV attempt will be made per call, and a charge shall apply.

10.7.1.1.5 Busy Line Interrupt (BLI) is performed when CLEC's End User Customers request assistance from the operator to interrupt a telephone call in progress. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will not connect the calling and called parties. The operator will make only one BLI attempt per call and the applicable charge applies whether or not the called party releases the line.

10.7.1.1.6 Quote Service – Provides time and charges to hotel/motel and other CLEC End User Customers for guest/account identification.

10.7.1.1.7 CLEC-Specific Call Branding Service. Provides CLEC's End User Customers the operator services listed in this Section branded with the brand of CLEC (CLEC-specific branding), where Technically Feasible, or with a generic brand. CLEC-specific Call Branding announces CLEC's name to CLEC's End User Customer at the start and completion of the call. Generic branding does not announce any provider's name. CLEC-specific and generic Call Branding are optional services available to CLEC.

10.7.1.1.7.1 Front End CLEC-specific Call Branding -- Announces CLEC's name to CLEC's End User Customer at the start of the call.

10.7.1.1.7.2 Back End CLEC-specific Call Branding -- Announces CLEC's name to CLEC's End User Customer at the completion of the call.

## 10.7.2 Terms and Conditions

10.7.2.0 Operator services accessed over CLEC's resold local exchange lines include terms and conditions (except prices) for operator services in Malheur's applicable product Tariffs, catalogs, price lists, or other retail Telecommunications Services offerings. To the extent, however, that a conflict arises between the terms and conditions of the Tariff, catalog, price list, or other retail Telecommunications Services offering and this Agreement, this Agreement shall be controlling. Operator services are available to facilities-based CLEC as described in this Section 10.7, unless otherwise noted.

10.7.2.0.1 Malheur does not authorize CLEC to offer Malheur the incumbent Local Exchange Carrier (ILEC) as a Local Primary Interexchange Carrier (LPIC) to its existing or new End User Customers on Malheur's behalf. If CLEC assigns Malheur the ILEC, LPIC 5123, to CLEC's existing or new End User Customers, Malheur will bill reseller CLEC for IntraLATA Toll services at the Malheur retail rate less the wholesale discount contained in Exhibit A, if any, and will bill facilities-based CLEC at the rates contained or referenced in Exhibit A, and Malheur will not directly bill CLEC's End User Customers for such IntraLATA Toll services.

10.7.2.0.2 If CLEC assigns Malheur the ILEC, PIC 5123, to CLEC's existing or new End User Customers, transport beyond Malheur's local interoffice network for IntraLATA Toll services will be provided over Malheur's IntraLATA Toll network. Routing tables resident in Malheur's Switch(es) will direct CLEC's traffic over Malheur's interoffice message trunk network.

10.7.2.0.3 If, during the term of this Agreement, Malheur the ILEC offers IntraLATA Toll services directly to CLEC's End User Customers, Malheur will establish its own billing relationship with such End User Customers, and Malheur will not bill CLEC, and CLEC shall have no obligation to pay Malheur, for such IntraLATA Toll services Malheur provides to CLEC's End User Customers.

10.7.2.1 For facilities-based CLEC using its own or a third party's Switch(es), Interconnection to Malheur's operator services Switch is Technically Feasible at two (2) distinct points on the Trunk Side of the Switch. The first connection point is an operator services trunk connected directly to the Malheur operator services host Switch. The second connection point is an operator services trunk connected directly to a remote

Malheur operator services Switch.

10.7.2.2 Trunk Provisioning and facility ownership must follow Malheur guidelines.

10.7.2.3 In order for CLEC to use Malheur's operator services as a facilities-based CLEC using its own or a third party's Switch(es), CLEC must provide an operator service trunk between CLEC's End Office Switch and the Interconnection point on the Malheur operator services Switch for each NPA served.

10.7.2.4 The technical requirements of operator service trunk are covered in the Operator Services Systems Generic Requirement (OSSGR), Telcordia document FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

10.7.2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.

10.7.2.6 Facilities-based CLEC using its own or a third party's Switch(es) will provide separate no-test trunks (not the local/IntraLATA trunks) to the Malheur BLV/BLI hub or to the Malheur operator services Switches.

10.7.2.7 Malheur will perform operator services in accordance with operating methods, practices, and standards in effect for all its End User Customers, including making and receiving EAS/local and IntraLATA Toll calls. Malheur will respond to CLEC's End User Customer calls to Malheur's operator services according to the same priority scheme as it responds to Malheur's End User Customer calls. Calls to Malheur's operator services are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Malheur End User Customers.

10.7.2.8 Malheur will provide operator services to CLEC where Technically Feasible and facilities are available. Malheur may from time-to-time modify and change the nature, extent, and detail of specific operator services available to its retail End User Customers, and to the extent it does so, Malheur will provide notice to CLEC on a timely basis consistent with Commission rules and notice requirements.

10.7.2.9 Malheur shall maintain adequate equipment and personnel to reasonably perform the operator services. Facilities-based CLEC using its own or a third party's Switch(es) shall provide and maintain the facilities necessary to connect its End User Customers to the locations where Malheur provides the operator services and to provide all information and data needed or reasonably requested by Malheur in order to perform the operator services.

10.7.2.10 Intentionally Left Blank.

10.7.2.11 CLEC-specific Call Branding for operator services includes recording and setting up CLEC's brand message and loading the brand message into Malheur's Switch(es). Malheur will record CLEC's brand message.

10.7.2.12 Intentionally Left Blank.

10.7.2.13 Reseller CLEC's End User Customers dial the same number Malheur's own End User Customers dial to access operator services, including "0" or "0+." Facilities-based CLEC using its own or a third party's Switch(es) may choose to have its End User Customers access Malheur operators by dialing a unique number or by using the same dialing pattern as used by Malheur End User Customers.

### 10.7.3 Rate Elements

The following rate elements apply to operator services. Operator services are provided to CLEC for resale with resold local exchange lines at the Malheur retail price less the wholesale discount contained in Exhibit A, if any. Operator services are provided to CLEC as a facilities-based provider at the market-based prices contained in Exhibit A.

10.7.3.1 Operator services are priced on a per call basis, as follows.

10.7.3.1.1 Operator Services Calls – Charges apply for each completed call handled by operator services, including EAS/local calls and IntraLATA toll calls made, or received and accepted, by CLEC's End User Customer.

10.7.3.1.2 Intentionally Left Blank.

10.7.3.1.3 Intentionally Left Blank.

10.7.3.1.4 Intentionally Left Blank.

10.7.3.1.5 Intentionally Left Blank.

10.7.3.1.6 Busy Line Verify – Charges apply for each call where the operator determines that conversation exists on a line.

10.7.3.1.7 Busy Line Interrupt – Charges apply for each call where the operator interrupts conversation on a busy line and requests release of the line.

10.7.3.1.8 Operator Assistance – Charges apply for operator assistance whether a call is completed or not, that does not otherwise generate an operator surcharge as described in this Section. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where CLEC's End User Customer requests information from the operator and no attempt is made to complete a call; and calls for quotation service.

10.7.3.1.9 "Completed call" as used in this Section shall mean that CLEC's End User Customer makes contact with the location, telephone number, person or extension designated by the End User Customer.

10.7.3.2 Intentionally Left Blank.

10.7.3.3 CLEC-Specific Call Branding Nonrecurring Charges. Malheur will charge CLEC a nonrecurring set-up and recording fee for establishing CLEC-specific Call Branding, and for loading CLEC's brand message in Malheur's Switch(es). CLEC must

pay such nonrecurring charges prior to commencement of CLEC-specific branding. The nonrecurring charges apply each time CLEC's brand message is changed. The nonrecurring charge to load the Switches with CLEC's branded message will be assessed each time there is any change to the Switch.

#### **10.7.4 Ordering Process**

CLEC will order operator services by completing the "Malheur Operator Services/Directory Assistance Questionnaire for Competitive Local Exchange Carriers." Copies of this questionnaire may be obtained from CLEC's designated Malheur account manager.

#### **10.7.5 Billing**

10.7.5.1 Malheur will track usage and bill CLEC for the calls made and received by CLEC's End User Customers and facilities.

10.7.5.2 Malheur will compute CLEC's invoice based on calls made and received by CLEC's End User Customers.

10.7.5.3 If, due to equipment malfunction or other error, Malheur does not have available the necessary information to compile an accurate Billing statement, Malheur may render a reasonably estimated bill, but shall notify CLEC of such estimate and cooperate in good faith with CLEC to establish a fair, equitable estimate. Malheur shall render a bill reflecting actual billable quantities when and if the information necessary for the Billing statement becomes available.

10.7.5.4 Malheur shall provide to CLEC usage information within Malheur's control with respect to calls originated by or terminated to CLEC's End User Customers in the form of the actual information that is comparable to the information Malheur uses to bill its own End User Customers. Without limiting the generality of the foregoing, Malheur shall provide CLEC with Daily Usage Feed (DUF) billing information.

10.7.5.5 Malheur will provide DUF records for all usage billable to CLEC's lines, including Busy Line Verify (BLV), Busy Line Interrupt (BLI), and Malheur-ILEC-provided intraLATA toll. These records will be provided as Category 01 or Category 10 EMI records.

10.7.5.6 If CLEC assigns Malheur the ILEC to provide IntraLATA Toll services for its End User Customers, Malheur shall bill CLEC and CLEC shall pay Malheur for such services in accordance with Exhibit A.

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

#### **10.8.1 Description**

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

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Malheur.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Malheur will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare duct/conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty duct/conduit. Control of CLEC-installed spare innerduct shall vest in Malheur immediately upon installation; ownership of such innerduct shall vest to Malheur if and when CLEC abandons such innerduct. Within a multiple tenant environment (MTE), duct may traverse building Entrance Facilities, building entrance links, equipment rooms, Remote Terminals, cable vaults, telephone closets or building riser.

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

10.8.1.2.2 The term innerduct means a duct-like raceway smaller than a duct/conduit that is inserted into a duct/conduit so that the duct may typically carry three (3) cables.

10.8.1.2.3 The term microduct means a smaller version of innerduct. Four (4) microducts can be placed within a 1¼-inch innerduct.

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

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

10.8.1.4 Intentionally Left Blank.

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

10.8.1.6 Poles, Ducts and Rights of Way (PDR) Transfer of Responsibility refers to the transfer of the occupancy of space for either aerial or underground facilities to assuming CLEC from vacating CLEC.

10.8.1.6.1 A PDR Transfer of Responsibility request received by Malheur is irrevocable upon one hundred percent (100%) payment by assuming CLEC of the nonrecurring transfer charge.

## **10.8.2 Terms and Conditions**

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

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

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

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

10.8.2.4 CLEC shall provide access to a map of the requested poles/duct/innerduct/ROW route, including estimated distances between major points, the identification and location of the poles/duct/innerduct and ROW and a description of CLEC's facilities. Malheur agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed forty-five (45) Days.

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

10.8.2.6 Malheur retains the right to determine the availability of space on poles/duct/innerduct, conduit and ROW consistent with 47 U.S.C. § 224 and FCC

orders, rules and regulations pursuant to 47 U.S.C. § 224. In the event Malheur determines that rearrangement of the existing facilities on poles, duct/innerduct/conduit, and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated order (Make-Ready fee). When modifications to a Malheur spare duct/conduit include the placement of innerduct, Malheur or CLEC will install the number of innerduct required to fill the duct/conduit to its full capacity.

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

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

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

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

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

10.8.2.10.2 To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Malheur or its Affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Malheur or any other party that uses a modification as

an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Malheur does not and will not favor itself over other Carriers when Provisioning access to poles, innerduct and rights-of-way.

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

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

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

10.8.2.13 When final construction inspection by Malheur has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Malheur in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, poles/duct/innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said poles/duct/innerduct or ROW system and CLEC shall remove its facilities from said poles/duct/innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Malheur may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the poles/duct/innerduct system where such non-complying conditions exist. If agreed between both Parties, Malheur shall perform or have performed such corrections and CLEC shall pay Malheur the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Malheur.

10.8.2.14 Once CLEC's facilities begin occupying the poles/duct/innerduct or ROW system, Malheur may perform a reasonable number of inspections. Malheur shall bear

the cost of such inspections unless the results of the inspection reveal a material violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Malheur the costs of inspections and re-inspections, as required. CLEC's representative may accompany Malheur on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

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

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

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

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

10.8.2.19 Malheur may abandon or sell any poles/duct/innerduct/conduit or ROW at any time by giving written notice to CLEC. Any poles/duct/innerduct/conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of poles/duct/innerduct/conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) Days of such notice, either: 1) continue to occupy the poles/duct/innerduct/conduit or ROW pursuant to its existing rights under this Agreement if the poles/duct/innerduct/conduit or ROW is purchased by another party; 2) purchase the poles/duct/innerduct/conduit or ROW from Malheur at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) Days shall be deemed an election to purchase the poles/duct/innerduct/conduit or ROW at the current market value if no other party purchased the poles/duct/innerduct/conduit or ROW within this sixty (60) Day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Telcordia Manual of Construction Standards, the National Electrical Code, the National Electrical Safety

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

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

10.8.2.22 If any facilities are found attached to poles/duct/innerduct for which no order is in effect, Malheur, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of \$200.00 (two hundred dollars) per Pole or \$200 (two hundred dollars) per innerduct run between two (2) manholes, plus payment as specified in this Section. Malheur shall waive half the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) Days of written notification from Malheur of the unauthorized attachment; and (2) the unauthorized attachment did not require Malheur to take curative measures itself (e.g., pulling additional innerduct) prior to the cure by CLEC. Malheur shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Malheur rather than by CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Malheur of the unauthorized occupancy, a poles/duct/innerduct application. If such application is not received by Malheur within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) Days of the final date for submitting the required application, or Malheur may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

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

10.8.2.24 Malheur will provide CLEC non-discriminatory access to poles/ducts/innerducts/conduits and ROW pursuant to 47 U.S.C. § 224 and FCC orders, rules and regulations pursuant to 47 U.S.C. § 224. In the event of a conflict between this Agreement, on one hand, and 47 U.S.C. § 224 and FCC orders, rules and regulations

pursuant to 47 U.S.C. § 224, on the other, 47 U.S.C. § 224 and FCC orders, rules and regulations pursuant to 47 U.S.C. § 224 shall govern. Further, in the event of a conflict between Exhibit D, on one hand, and this Agreement or 47 U.S.C. § 224 and FCC orders, rules and regulations pursuant to 47 U.S.C. § 224, on the other, this Agreement or 47 U.S.C. § 224 and FCC orders, rules and regulations pursuant to 47 U.S.C. § 224 shall govern, provided however, that any Access Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this Agreement shall require Malheur to exercise eminent domain on behalf of CLEC.

10.8.2.26 Malheur will not enter into ROW agreements for the provision of Telecommunications Services, including agreements relating to ROW within multiple tenant environments, that preclude CLEC from using ROW over which Malheur has ownership or control. Upon CLEC request, Malheur will certify to a landowner with whom Malheur has an ROW agreement, the following:

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

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

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

10.8.2.27.1 Upon receipt of a completed Attachment 1.A, Malheur will prepare and return an MTE matrix or ROW matrix, as applicable, within ten (10) Days, which will identify (a) the owner of the duct/conduit or ROW or multiple tenant environment as reflected in Malheur's records, and (b) whether or not Malheur has a copy of an agreement that provides Malheur access to duct/conduit or ROW or multiple tenant environment in its possession. Malheur makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that the original property owner may not be the current owner of the property.

10.8.2.27.2 Intentionally Left Blank.

10.8.2.27.3 For purposes of this Agreement, Malheur shall redact all dollar figures from copies of duct/conduit or ROW or multiple tenant environment agreements that have not been publicly recorded that Malheur provides to CLEC.

10.8.2.27.4 In all instances, CLEC will use agreements only for the following purposes: (a) to determine whether Malheur has ownership or control over duct, conduits, or rights-of-way within the property described in the agreement and the scope of such ownership or control; (b) to determine the ownership of wire within the property described in the agreement; (c) to determine the Demarcation Point between Malheur facilities and the owner's facilities in the property described in the agreement; (d) to determine the extent of the property interest of the third party owner, including any provisions that establish the legal description of any property interest of a third party owner, including any metes and bounds of the property; (e) to determine the term of the agreement; and (f) to determine the parties to the agreement. CLEC further agrees that CLEC shall not disclose the contents, terms, or conditions of any agreement provided pursuant to Section 10.8.2.27 to any CLEC agents or employees engaged in sales or marketing efforts on behalf of CLEC. These limitations shall not apply if CLEC executes the Access Agreement set forth in Attachment 4 to Exhibit D of this Agreement.

10.8.2.28 In cities where Malheur has deployed microduct technology but no vacant microduct is available on the specified route, CLEC may request Malheur to place microduct along the desired route or CLEC can choose to place microduct that must meet Malheur specifications.

10.8.2.29 In cities where Malheur has not deployed microduct and CLEC wishes to use this technology, CLEC must lease an innerduct. In these locations CLEC will be required to furnish and place the microduct. At the conclusion of the lease, CLEC and Malheur will make a joint decision whether or not CLEC will be required to remove CLEC's microduct from the innerduct.

10.8.2.30 If any microduct is found occupying facilities for which no order is in effect, Malheur, without prejudice to its other rights or remedies, may assess a charge and CLEC agrees to pay the lesser of (a) the annual fee per microduct run between two (2) manholes for the number of years since the most recent inventory, or (b) five (5) times the annual fee per microduct run between two (2) manholes.

10.8.2.30.1 In addition, CLEC agrees to pay (a) interest on these fees at a rate set for the applicable time period by the Internal Revenue Service for individual underpayments pursuant to Section 6621 of the Internal Revenue Service Code (25 U.S.C 6621, Rev. Rul. 2000-30, 2000-25 IRS 1262), and (b) the cost of any audit required to identify unauthorized CLEC occupancy.

10.8.2.30.2 Malheur shall waive half the unauthorized occupancy fee if the following conditions are met:

10.8.2.30.2.1 CLEC cures such unauthorized occupancy by removing it or submitting a valid order for the attachment within thirty (30) days of written notification from Malheur.

10.8.2.30.2.2 The unauthorized occupancy did not require Malheur to take curative measures (e.g., pulling additional microduct) prior to cure by CLEC.

10.8.2.30.2.3 CLEC reimburses Malheur for cost of audit, or portion

thereof, which discovered the unauthorized occupancy. Malheur shall also waive the unauthorized occupancy fee if the unauthorized occupancy arose due to error by Malheur rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Malheur of the unauthorized occupancy, a Poles/Duct/Innerduct/Microduct Application. If such application is not received by Malheur within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) Days of the final date for submitting the required application, or Malheur may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.31 To be eligible for PDR Transfer of Responsibility of the occupancy of space for poles or conduit, vacating CLEC must have a valid Agreement in place for those facilities specified for transfer.

10.8.2.31.1 The assuming CLEC is required to have an Agreement with Malheur that includes all elements involved in the transfer.

10.8.2.31.2 The Agreement referenced in the PDR Transfer of Responsibility request will be transferred either in its entirety or portion thereof as specified in the PDR Transfer of Responsibility Application Form and Transfer Authorization Agreement.

10.8.2.31.3 The PDR Transfer of Responsibility includes changing the following Malheur items: Customer name, Access Carrier Name Abbreviation (ACNA), Master Customer Number (MCN), customer address, telephone number, billing and contact information, and contact telephone number. The eight (8) character CLEC CLLI™ code will remain the same.

10.8.2.31.4 If vacating CLEC has filed for bankruptcy, assuming CLEC must comply with 11 U.S.C. Section 365.2.6l. The negotiation of the terms and conditions between vacating CLEC and assuming CLEC is the responsibility of those two parties. Malheur does not participate in these discussions. Malheur manages the database and records the transfer.

10.8.2.31.5 Malheur is not responsible for the physical condition of CLEC's facilities.

10.8.2.31.6 Prior to submission of a PDR Transfer of Responsibility request, all work in progress must be negotiated between vacating and assuming CLEC.

10.8.2.31.7 Prior to submitting a Transfer of Responsibility request, assuming CLEC's financial obligations to Malheur must be in good standing. If vacating CLEC is unable to meet its financial obligations, assuming CLEC will be required to assume the financial obligations of vacating CLEC.

10.8.2.31.8 Vacating and assuming CLEC must provide Malheur a signed Malheur PDR Transfer Authorization Agreement providing the following information: All Malheur Central Office Service Areas that may apply, PDR Billing Authorization Numbers (BAN), requested completion date (not binding),

and state-specific charge for the transfer as indicated in Exhibit A.

10.8.2.31.9 Once the transfer request is accepted, Malheur will submit the signed PDR Transfer of Responsibility Request Consent Form to vacating and assuming CLECs and the transfer will be completed.

### 10.8.3 Rate Elements

Recurring and nonrecurring charges for attachments are in accordance with Section 224 of the Act and FCC orders, rules, and regulations promulgated there under, and with rates as established by the Commission. Malheur will re-calculate recurring rates for pole attachments and innerduct occupancy annually using the FCC rules and formulae found at 47 C.F.R. § 1, Subpart J and A.R.M.I.S data filed by Malheur with the FCC and using Commission-identified modifications to the FCC formulae. Malheur will implement and bill CLEC the re-calculated rates without amending this Agreement. Malheur will provide notice to CLEC of the new recurring rates not less than sixty (60) days in advance of the effective date for such rates. Recurring charges are included in Exhibit A and will be updated annually. Nonrecurring charges are included in Exhibit A.

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

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

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

giving rise to such work beyond the simple preparation of one or more Access Agreements. The estimated pre-paid fee shall be billed in advance.

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

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

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

10.8.3.7 Microduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any make-ready period, and billed annually per microduct, per foot.

10.8.3.8 PDR Transfer of Responsibility. Vacating CLEC will not incur charges for a transfer of responsibility agreement. A PDR Transfer of Responsibility charge for assuming CLEC will be a nonrecurring charge associated with the transfer of the agreement.

#### **10.8.4 Ordering**

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

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

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

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

10.8.4.1.3 Inquiry Review – ROW. Malheur shall, upon request of CLEC, provide the ROW matrix, the MTE matrix and a copy of all agreements listed in those matrices to CLEC within ten (10) Days of the request. Malheur may redact all dollar figures from copies of agreements listed in the matrices that have not been publicly recorded that Malheur provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the Dispute Resolution procedures set forth in this Agreement. Malheur makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Malheur's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Malheur.

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

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Malheur performing same) with the following stipulations: 1) Verifications will be conducted by a Malheur approved contractor; 2) A Malheur contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Malheur with a legible copy of manhole butterfly drawings that reflect necessary make-ready effort; and 4) Malheur will use CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available duct/innerduct. CLEC will be charged standard rates for tactical planner time.

10.8.4.3 Order – Poles and Duct/Innerduct. The review, signing and return of

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

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

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

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

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

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

10.8.4.5 The PDR Transfer of Responsibility process requires the submission of the DPR Transfer of Responsibility Application Form containing information for both the vacating and assuming CLECs, a signed Malheur PDR Transfer Authorization Agreement, and full payment of the quoted PDR Transfer of Responsibility charge.

10.8.4.5.1 The PDR Transfer of Responsibility Application Form and Transfer Authorization Agreement are on Malheur's web site at:

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

10.8.4.5.2 The PDR Transfer of Responsibility Application Form and an electronic version of the Transfer Authorization Agreement with "Agreed" entered in the designated signature blocks (this will act as your electronic signature) must be submitted to [wsst@qwest.com](mailto:wsst@qwest.com).

10.8.4.5.3 The printed and signed PDR Transfer Authorization Agreement and full payment is to be mailed to: Resource Allocation, 700 W. Mineral MT-G28.24, Littleton CO 80120.

### **10.8.5 Billing**

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

10.8.5.2 Vacating CLEC is obligated to pay all recurring charges until Malheur completes the PDR Transfer of Responsibility request. Once the transfer is complete, the effective date to cease recurring billing will coincide with the same date recurring billing starts for assuming CLEC.

### **10.8.6 Maintenance and Repair**

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

## 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 Malheur 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 Malheur ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Malheur assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Malheur 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 Malheur security and safety procedures and requirements while performing work activities on Malheur's Premises.

11.8 Malheur 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 Malheur.

11.9 Malheur 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. Malheur has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Malheur security policies and guidelines.

11.12 When working on Malheur ICDF Frames or in Malheur's common or CLEC equipment line-ups, Malheur and CLEC employees, agents and vendors agree to adhere to Malheur quality and performance standards provided by Malheur and as specified in this Agreement.

11.13 CLEC shall report all material losses to Malheur Security. All security incidents are to be referred directly to local Malheur Security – 1-888-879-7328. In cases of emergency, CLEC shall call 911 and 1-888-879-7328.

11.14 Malheur and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 Malheur and CLEC shall ensure adherence by their employees, agents and vendors to all applicable Malheur 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 Malheur and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Malheur 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 Malheur identification/access card.

11.18 Malheur and CLEC's employees, agents and vendors shall comply with Malheur 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 Malheur buildings, Wire Centers, or other Malheur 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. Malheur shall provide written notice within five (5) Days of 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) Days to remedy any such violation for which it has received notice from Malheur. In the event that CLEC fails to remedy any such violation of which it has received notice within such five (5) Days following receipt of such notice, CLEC shall be denied unescorted access to the affected Premises. In the event CLEC disputes any action Malheur 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 Malheur buildings or on the grounds.

11.21 No weapons of any type are allowed on Malheur Premises. Vehicles on Malheur 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 Malheur 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 Malheur Premises, Malheur equipment or Malheur 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 Malheur 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 Malheur 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) Days of written notice of non-compliance, or if such non-compliance cannot be corrected within ten (10) 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 Malheur is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Malheur 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 Malheur security

may be notified. Continued violations may result in termination of access privileges. Malheur 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) Days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Malheur 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 Malheur Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)

800-201-7033 (all other Malheur states)

11.27 CLEC will submit a Malheur Collocation Access Application form for individuals needing to access Malheur facilities. CLEC and Malheur 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 Malheur Security. If cards or keys cannot be collected, CLEC will immediately notify Malheur at 800-210-8169.

11.30 CLEC will assist Malheur 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 Malheur and CLEC employees, agents and vendors will notify Malheur 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 Malheur if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Malheur may deny access to anyone who in the reasonable judgment of Malheur threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Malheur 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 Malheur Security, who will provide it to the appropriate Malheur personnel.

11.34 Revenue Protection. Malheur 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. Malheur 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 Malheur 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 Malheur 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 Malheur becomes aware of potential fraud with respect to CLEC's accounts, Malheur 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. Malheur 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 Malheur 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 Malheur Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Malheur Wire Centers or cross boxes, whether the line is a resold line or Unbundled Loop element, Malheur 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 Malheur 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 Malheur 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 Malheur's OSS. These gateways provide security for the interfaces, protecting the integrity of the Malheur OSS and databases. Malheur'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 Malheur has developed and shall provide to CLEC. Additional technical information and details shall be provided by Malheur in training sessions and documentation and support, such as the "Interconnect Mediated Access User's Guide." Malheur will continue to make improvements to the electronic interfaces as technology evolves, Malheur's legacy systems improve, or CLEC needs require. Malheur 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, Malheur shall provide CLEC non-discriminatory access to Malheur'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, Malheur 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, Malheur shall provide CLEC access to Malheur's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Malheur will comply with the standards for access to OSS set forth in Section 20. Malheur shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Malheur shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Malheur shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its web site, training, disclosure documentation and development assistance, Malheur shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Malheur shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Malheur will identify how its interface differs from national guidelines or standards. Malheur shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

### **12.2 OSS Support for Pre-ordering, Ordering and Provisioning**

12.2.0 Malheur will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Malheur will work cooperatively with CLECs through the CMP to consider any suggestions made by CLECs to improve or modify such plans. CLEC-specific requests for modifications to such plans will be negotiated and mutually agreed upon between Malheur and CLEC.

#### 12.2.0.1 Ordering and Provisioning

12.2.0.1.1 Ordering and Provisioning - Malheur will provide access to ordering and status functions. CLEC will populate the service request to identify

what features, services, or elements it wishes Malheur to provision in accordance with Malheur's published business rules.

12.2.0.1.2 Malheur will provide all Provisioning services to CLEC during the same business hours that Malheur provisions services for its End User Customers. Malheur 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. Malheur shall disclose the business rules regarding out-of-hours Provisioning on its wholesale web site.

12.2.0.1.3 When CLEC places a manual order, Malheur will provide CLEC with a manual Firm Order Confirmation (FOC) notice. The confirmation notice will follow industry-standard formats.

12.2.0.1.4 Business rules regarding rejection of Local Service Requests (LSR) or Access Service Requests (ASR) are subject to the provisions of Section 12.2.6.

12.2.0.1.5 When Malheur provides installation on behalf of CLEC, Malheur will advise CLEC's End User Customer to notify CLEC immediately if the End User Customer requests a service change at the time of installation.

## **12.2.1 Ordering Process**

### **12.2.1.1 Local Service Requests (LSR)**

12.2.1.1.1 Malheur shall provide electronic interface gateways for submission of LSRs, including both an application-to-application interface and a Graphical User Interface (GUI).

12.2.1.1.2 The interface guidelines for the application-to-application interface are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), and the appropriate electronic transmission standards. Exceptions to the above guidelines/standards shall be specified in the Interconnect Mediated Access (IMA) disclosure documents.

12.2.1.1.3 The GUI shall provide a single interface for Pre-order and Order transactions from CLEC to Malheur 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.

12.2.1.1.4 Functions Pre-ordering - Malheur will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Malheur will make the following real time pre-order functions available to CLEC:

12.2.1.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.1.4.2 Access to Customer Service Records (CSRs) for Malheur 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;

12.2.1.1.4.3 Telephone number request and selection;

12.2.1.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Malheur technician on a non-discriminatory basis;

12.2.1.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.1.4.6 Service address verification;

12.2.1.1.4.7 Facility availability, Loop qualification and Loop make-up information, including, but not limited to, Loop length, presence of Bridged Taps, repeaters, and loading coils;

12.2.1.1.4.8 A list of valid available CFAs for Unbundled Loops;

12.2.1.1.4.9 A list of one to five (1-5) individual Meet Points or a range of Meet Points for shared Loops;

12.2.1.1.4.10 Design Layout Record (DLR) Query which provides the layout for the local portion of a circuit at a particular location where applicable;

12.2.1.1.4.11 NC/NCI combinations supported by IMA flow-through can be addressed;

12.2.1.1.4.12 Raw Loop Data can be validated in IMA and QORA and retrieved by segments and sub-segments; and

12.2.1.1.4.13 Loop Qualification for ISDN and Malheur DSL services can be performed using IMA Loop Qualification Tool.

12.2.1.1.5 When CLEC places an electronic order, Malheur will provide CLEC with an electronic FOC. The FOC will follow industry-standard formats and contain the Malheur Due Date for order completion. Upon completion of the order, Malheur supplies two (2) completion notices: 1) service order completion (SOC) which notifies CLEC when the service order record was completed, and 2) Billing completion that notifies CLEC that the service order has posted to the Billing system.

12.2.1.1.6 When CLEC places an electronic order, Malheur will provide notification electronically of any instances when 1) Malheur's Committed Due Date is in jeopardy of not being met by Malheur, or 2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.1.7 When CLEC places a manual order, Malheur provide notification of any instances when 1) Malheur's committed Due Date is in jeopardy of not being met by Malheur on any service, or 2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.1.8 Dial-Up Capabilities

12.2.1.1.8.1 Intentionally Left Blank.

12.2.1.1.8.2 Intentionally Left Blank.

12.2.1.1.8.3 When CLEC requests from Malheur 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 Malheur, then CLEC shall be able to use SecurIDs until such time as Malheur provisions the T1 line and the line permits pre-order and order information to be exchanged between Malheur and CLEC.

12.2.1.1.9 Application-to-application Facilities-based Listing Process. Malheur shall provide an application-to-application facilities-based listing interface to enable CLEC's listing data to be translated and passed into the Malheur listing database. This interface is based upon OBF LSOG and the appropriate electronic transmission standards. Malheur shall supply exceptions to these guidelines/standards in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.2 Access Service Request (ASR)

12.2.1.2.1 Malheur shall provide a computer-to-computer batch file interface, an application-to-application interface, and a GUI interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Malheur shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.2.2 Functions Pre-ordering. Malheur will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described in this Section. Malheur will make the following real time pre-order functions available to CLEC:

12.2.1.2.2.1 Service Address validation;

12.2.1.2.2.2 CFA validation;

12.2.1.2.2.3 NC-NCI validation;

12.2.1.2.2.4 BAN validation; and

12.2.1.2.2.5 CLLI validation.

12.2.1.2.3 When CLEC places an electronic or manual order,

Malheur will provide notification of any instances when 1) Malheur's committed Due Date is in jeopardy of not being met by Malheur, or 2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.2.4 When CLEC places an electronic order, Malheur will provide CLEC with an electronic Firm Order Confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Malheur Due Date for order completion.

### **12.2.2 Maintenance and Repair**

12.2.2.1 Malheur shall provide electronic interface gateways, including an Electronic Bonding interface and a GUI interface, for reviewing an End User Customer's trouble history at a specific location, conducting testing of an End User Customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Malheur and CLEC while the Trouble Report (TR) is open and a Malheur 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 Malheur shall make its OSS interfaces available to CLEC during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Malheur shall notify CLEC 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 Malheur Interexchange Access Billing System (IABS), Malheur will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Malheur Customer Record Information System (CRIS), Malheur 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 Malheur. 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 Malheur 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 Malheur holidays. This information is a file of unrated Malheur 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. Malheur will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for resale products.

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 - Malheur 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 resale, Unbundled Loop, and Interim Number Portability products.

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 resale and Unbundled Loop products.

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 Malheur and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Intentionally Left Blank.

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. Malheur agrees to maintain a change management process, known as (CMP), that is consistent with or exceeds industry guidelines, standards and practices to address Malheur's OSS, products and processes. The CMP shall include, but not be limited to, utilization of the following: (i) a forum for CLEC and Malheur to discuss CLEC and Malheur change requests (CR), CMP notifications, systems release life cycles, and communications; (ii) provide a forum for CLECs and Malheur to discuss and prioritize CRs, where applicable pursuant to the CMP Document; (iii) a mechanism to track and monitor CRs and CMP notifications; (iv) established intervals where appropriate in the process; (v) processes by which CLEC impacts that result from changes to Malheur'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 Malheur 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 Malheur 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 Malheur and requires agreement by the CMP participants. Pursuant to the scope and procedures set forth in the CMP Document, Malheur will submit to CLECs through the CMP, among other things, modifications to existing products 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. Malheur will maintain as part of CMP an escalation process so that CMP issues can be escalated to a Malheur 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" Document is the subject of ongoing negotiations between Malheur and CLECs in the ongoing CMP. The CMP Document will continue to be changed through those discussions. The CMP Document reflects the commitments Malheur has made regarding maintaining its CMP and Malheur commits to implement agreements made in the CMP process as soon as practicable after they are made. The CMP Document will be subject to change through the CMP, as set forth in the CMP Document. Malheur will maintain the most current version of the CMP Document on its wholesale web site.

12.2.6.1 In the course of establishing operational ready system interfaces between Malheur and CLEC to support local service delivery, CLEC and Malheur may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Malheur 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.

12.2.6.3 Intentionally Left Blank.

### **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 Malheur receives a complete and accurate New Customer Questionnaire, Malheur and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

### **12.2.8 Malheur Responsibilities for On-going Support for OSS Interfaces**

Malheur will support previous application-to-application releases for six (6) months after the next subsequent release has been deployed.

12.2.8.1 Malheur will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Malheur will provide an 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. Malheur will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Malheur shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Malheur shall provide training necessary for CLEC to use Malheur's OSS interfaces and to understand Malheur's documentation, including Malheur'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 application-to-application exchange protocol will be used to transport electronically-formatted content. CLEC must perform certification testing of exchange protocol prior to using the application-to-application interface.

12.2.9.3 Malheur 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 Malheur's OSS. Malheur has established the following test processes to assure the implementation of a solid interface between Malheur and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Malheur will conduct connectivity testing. This test will establish the ability of the trading partners to send and receive electronic 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 Malheur has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment (SATE) regression testing: Malheur'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 application-to-application interface. Regression testing-SATE provides CLEC the opportunity to validate its technical development efforts built via Malheur documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted electronic transactions through the IMA system edits successfully for both new and existing releases. SATE uses test account data supplied by Malheur. Malheur 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 SATE-progression testing: CLEC has the option of participating with Malheur in progression testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Progression testing provides CLEC the opportunity to validate its technical development efforts built via Malheur documentation without the need to schedule test times. This testing verifies CLEC's ability to send correctly formatted electronic transactions through IMA system edits successfully for both new and existing releases. SATE uses test account data supplied by Malheur.

Malheur 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 required.

12.2.9.3.4 Controlled Production – Malheur and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit electronic data that completely meets the appropriate electronic transmission standards and complies with all Malheur business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Malheur production environment. Malheur treats these pre-order queries and orders as production pre-order and order transactions. Malheur 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 the application-to-application interface, Malheur shall provide CLEC with a pre-allotted amount of time to complete certification of its business scenarios. Malheur 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 CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Malheur 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. Malheur will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Malheur, Malheur will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the application-to-application interface, CLEC must work with Malheur to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Malheur and CLEC shall mutually agree to the business scenarios for which CLEC requires certification. Certification will be granted for the specified release of the 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, Malheur 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, Malheur has implemented the testing processes set forth in Sections 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.5 New releases of the application-to-application 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 Malheur coordinator in conjunction with the release manager of each IMA 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 Malheur Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new IMA application-to-application release, however, CLEC must complete the re-certification and migration to the new 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 IMA application-to-application interface versions and migration to subsequent application-to-application interface versions:

12.2.9.6.1.1 SATE regression or SATE progression 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 IMA application-to-application users must be certified and in production with at least one (1) product and one (1) 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 IMA application-to-application 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 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 test environment. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Malheur.

12.2.9.8 Intentionally Left Blank.

## **12.2.10 CLEC Support**

12.2.10.1 Malheur shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Malheur 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. Malheur 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 Malheur system for hardware configuration requirements with relevance to application-to-application and GUI interfaces; software configuration requirements with relevance to application-to-application and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, web-services 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 application-to-application 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 Malheur's wholesale web site. Malheur 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 charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Malheur shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Malheur 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 Malheur will provide repair and maintenance for all services covered by this Agreement in substantially the same time and manner as that which Malheur provides for itself, its End User Customers, its Affiliates, or any other party. Malheur shall provide CLEC repair status information in substantially the same time and manner as Malheur provides for its retail services.

12.3.1.2 During the term of this Agreement, Malheur will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Malheur to itself, its End User Customers, its Affiliates, or any other party.

12.3.1.3 Malheur 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 Malheur, its End User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

### **12.3.2 Branding**

12.3.2.1 Malheur shall use unbranded Maintenance and Repair forms while interfacing with CLEC End User Customers. Upon request, Malheur shall use CLEC provided and branded Maintenance and Repair forms. Malheur may not unreasonably interfere with branding by CLEC.

12.3.2.2 Except as specifically permitted by CLEC, in no event shall Malheur provide information to CLEC subscribers about CLEC or CLEC product or services.

12.3.2.3 This section shall confer on Malheur 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.

12.3.3.3 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 Malheur. CLEC shall have access for testing purposes at the Demarcation Point, NID, or Point of Interface. Malheur will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Malheur's network. Malheur 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 Malheur perform trouble isolation with CLEC, a Maintenance of Service Miscellaneous Charge or a Trouble Isolation charge applies if the trouble is found to be on CLEC's side or on the End User Customer's side of the Demarcation Point. If the trouble is on the End User Customer's side of the Demarcation Point, CLEC is required to perform its own maintenance.

12.3.4.3 Before submitting a repair request to Malheur, CLEC will isolate trouble to the Malheur network and must submit test results indicating the location of the trouble when submitting the repair request. If a trouble ticket with test results is accepted by Malheur, and Malheur determines that the trouble is on the CLEC or the End User Customer's side of the Loop Demarcation Point, a Maintenance of Service Miscellaneous Charge or a Trouble Isolation Charge applies. When CLEC elects not to perform trouble isolation and Malheur performs tests at CLEC request, a Maintenance of Service Miscellaneous Charge or a Trouble Isolation charge applies if the trouble is not in Malheur's facilities, including Malheur's facilities leased by CLEC. When trouble is found on Malheur's side of the Demarcation Point, or Point of Interface, during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) Days, Maintenance of Service Miscellaneous Charges or Trouble Isolation Charges

shall not apply.

### **12.3.5 Inside Wire Maintenance**

Except where specifically required by state or federal regulatory mandates, or as may be provided for under Section 6 of this Agreement, Malheur 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 Malheur line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Malheur will conduct testing, to the extent testing capabilities are available to Malheur, to diagnose and isolate a trouble in substantially the same time and manner that Malheur provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.2 Prior to Malheur conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Malheur must receive a trouble report from CLEC.

12.3.6.3 On manually reported trouble for non-designed services, Malheur 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, Malheur will provide CLEC test results upon request. For electronically reported trouble, Malheur will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Malheur provides for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.4 CLEC shall isolate the trouble condition to Malheur's portion of the line, circuit, or service provided in this Agreement before Malheur accepts a trouble report for that line, circuit or service. Once Malheur accepts the trouble report from CLEC, Malheur shall process the trouble report in substantially the same time and manner as Malheur does for itself, its End User Customers, its Affiliates, or any other party.

12.3.6.5 Malheur 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 Malheur 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 Malheur will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Malheur 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 Malheur shall be instructed to report all cases of trouble to Malheur.

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 Malheur or CLEC from discussing its products and services with CLEC's or Malheur's End User Customers who call the other Party seeking such information.

12.3.8.1.4 CLEC and Malheur 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 Malheur in error will be instructed to contact CLEC; and Malheur's End User Customers contacting CLEC in error will be instructed to contact Malheur. 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 Malheur or CLEC from discussing its products and services with CLEC's or Malheur's End User Customers who call the other Party seeking such information.

### **12.3.9 Major Outages/Restoral/Notification**

12.3.9.1 Malheur 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, Malheur 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 Malheur. 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 Malheur and/or industry standards.

12.3.9.2 Malheur will meet with associated personnel from CLEC to share contact information and review Malheur's outage restoral processes and notification processes.

12.3.9.3 Malheur's emergency restoration process operates on a 7X24 basis.

### **12.3.10 Protective Maintenance**

12.3.10.1 Malheur 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 Malheur will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible to CLEC of pending maintenance activity. Malheur shall provide notice of potentially CLEC Customer impacting maintenance activity, to the extent Malheur 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 Malheur shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Malheur on any services, including, to the extent Malheur can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Malheur shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Malheur 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 Malheur'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, Malheur'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 Malheur will provide trouble escalation procedures to CLEC. Such procedures will be substantially the same type and quality as Malheur employs for itself, its End User Customers, its Affiliates, or any other party. Malheur escalations are manual processes.

12.3.12.2 Malheur 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. Electronic escalation is not available for non-designed products.

12.3.12.3 Malheur 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 Malheur 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 acceptance of a complete and accurate trouble report from

CLEC, Malheur will follow internal processes and industry standards, to resolve the repair condition. Malheur will dispatch repair personnel on occasion to repair the condition. It will be Malheur's decision whether or not to send a technician out on a dispatch. Malheur 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 Malheur believes the dispatch is not necessary, appropriate Miscellaneous Charges for dispatch will be billed by Malheur to CLEC if Malheur 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, Malheur 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 Malheur shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.

#### **12.3.14 Trouble Reporting**

12.3.14.1 CLEC may submit trouble reports through the Electronic Bonding or GUI interfaces provided by Malheur. Trouble tickets created electronically in CEMR may be viewed at any time after creation.

12.3.14.2 Manually reported trouble tickets may be accessed by CLEC through electronic interfaces when the ticket has been closed. CLEC will only be able to view the history on the account.

#### **12.3.15 Intervals/Parity**

12.3.15.1 Similar trouble conditions, whether reported on behalf of Malheur End User Customers or on behalf of CLEC End User Customers, will receive commitment intervals in substantially the same time and manner as Malheur provides for itself, its End User Customers, its Affiliates, or any other party.

#### **12.3.16 Jeopardy Management**

12.3.16.1 Malheur will notify CLEC, in substantially the same time and manner as Malheur 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 Malheur repair center or use the electronic interfaces to obtain jeopardy status. A jeopardy, caused by either CLEC or Malheur, endangers completing provisioning and/or installation processes and impacts meeting the schedule due date of CLEC's service request. When CLEC's service request is in jeopardy, Malheur notifies CLEC via a status update, email, jeopardy notification, telephone call, and/or FOC (Firm Order Confirmation). The purpose of the jeopardy notification is to identify jeopardy conditions to CLEC that impact meeting the scheduled due date of CLEC's service requests.

### **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 Malheur only trouble reports that involve Malheur facilities. For services and facilities where the capability to test all or portions of the Malheur network service or facility rest with Malheur, Malheur will perform test isolation and test the service and facility on behalf of CLEC.

12.3.17.2 Intentionally Left Blank.

### **12.3.18 Maintenance Standards**

12.3.18.1 Malheur will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported trouble, Malheur will inform CLEC of repair completion in substantially the same time and manner as Malheur 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 Malheur employees who perform repair service for CLEC End User Customers will be trained in non-discriminatory behavior.

12.3.19.3 Malheur 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 Malheur's single and sole point of contact for all CLEC/DLEC End User Customers.

### **12.3.20 Repair Call Handling**

12.3.20.1 Manually-reported repair calls by CLEC to Malheur will be answered with the same quality and speed as Malheur answers calls from its own End User Customers.

### **12.3.21 Single Point of Contact**

12.3.21.1 Malheur 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 Malheur maintains an information database, available to CLEC for the

purpose of allowing CLEC to obtain information about Malheur's NPAs, LATAs, Access Tandem Switches and Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Malheur'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 Malheur 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, Malheur 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 a.m. Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 a.m., Mountain Time. Although Malheur normally does major Switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Malheur 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 Malheur provides this information to itself, its End User Customers, its Affiliates, or any other party.

12.3.23.3 Intentionally Left Blank.

12.3.23.4 Planned generic upgrades to Malheur Switches are included in the ICONN database, available to CLEC via Malheur'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, Malheur 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 Malheur provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Malheur 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. Malheur shall reject Switch or frame Trunk Side ASRs to augment capacity or change facilities issued by CLEC or Malheur, 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, Malheur 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 Malheur 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, Malheur shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Malheur 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, Malheur shall identify the particular dates and locations for Switch

conversion embargo periods in its ICONN database in substantially the same time and manner as Malheur 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 Malheur 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 Malheur 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 Malheur.

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 Malheur.

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 Malheur.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Malheur will restore service in substantially the same time and manner as Malheur 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. Malheur shall implement service order embargoes and/or quiet periods during Switch upgrades in substantially the same time and manner as Malheur does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Malheur shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Malheur's existing Switches. Malheur shall provide CLEC substantially the same service order processing capabilities as Malheur provides itself, its End User Customers, Affiliates, or any other party during such Switch hardware additions.

## **Section 13.0 - ACCESS TO TELEPHONE NUMBERS**

13.1 Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to request an assignment of any NANP number resources including, but not limited to, Central Office (NXX) Codes pursuant to the Central Office Code Assignment Guidelines published by the Industry Numbering Committee (INC) as INC 95-0407-008 (formerly ICCF 93-0729-010) and Thousand Block (NXX-X) Pooling Administration Guidelines INC 99-0127-023, when these Guidelines are implemented by the FCC or Commission Order. The latest version of the Guidelines will be considered the current standard.

13.2 North American Numbering Plan Administration (NANPA) has transitioned to NeuStar. Both Parties agree to comply with industry guidelines and Commission rules, including those sections requiring the accurate reporting of data to the NANPA.

13.3 It shall be the responsibility of each Party to program and update its own Switches and network systems pursuant to the Local Exchange Routing Guide (LERG) to recognize and route traffic to the other Party's assigned NXX or NXX-X codes. Neither Party shall impose any fees or charges on the other Party for such activities. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

13.4 Each Party is responsible for administering numbering resources assigned to it. Each Party will cooperate to timely rectify inaccuracies in its LERG data. Each Party will maintain/revise the LERG to reflect current homing arrangements, which includes subtending arrangements for local and access tandems. Each Party is responsible for updating the LERG data for NXX codes assigned to its End Office Switches. Each Party shall use the LERG published by Telcordia or its successor for obtaining routing information and shall provide through an authorized LERG input agent, all required information regarding its network for maintaining the LERG in a timely manner.

13.5 Each Party shall be responsible for notifying its End User Customers of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs.

## **Section 14.0 - LOCAL DIALING PARITY**

14.1 The Parties shall provide local Dialing Parity to each other as required under Section 251(b)(3) of the Act. Malheur will provide local Dialing Parity to competing providers of Telephone Exchange Service and telephone toll service, and will permit all such providers to have non-discriminatory access to telephone numbers, operator services, Directory Assistance, and Directory Listings, with no unreasonable dialing delays. CLEC may elect to route all of its End User Customers' calls in the same manner as Malheur routes its End User Customers' calls, for a given call type (e.g., 0, 0+, 1+, 411).

## **Section 15.0 - MALHEUR'S OFFICIAL DIRECTORY PUBLISHER**

15.1 Malheur and CLEC agree that certain issues outside the provision of basic white page Directory Listings, such as yellow pages advertising, yellow pages Listings, directory coverage, access to call guide pages (phone service pages), applicable Listings criteria, white page enhancements and publication schedules will be the subject of negotiations between CLEC and directory publishers, including Malheur's Official Directory Publisher. Malheur acknowledges that CLEC may request Malheur to facilitate discussions between CLEC and Malheur's Official Directory Publisher.

## **Section 16.0 - REFERRAL ANNOUNCEMENT**

16.1 When an End User Customer changes from Malheur to CLEC, or from CLEC to Malheur, and does not retain its original main/listed telephone number, the Party formerly providing service to the End User Customer will provide a transfer of service announcement on the abandoned telephone number. Each Party will provide this referral service consistent with its tariff. This announcement will provide details on the new number that must be dialed to reach the End User Customer.

## 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 Malheur as a product or service shall be treated as a Bona Fide Request (BFR). Malheur 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. Malheur will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Malheur form for BFRs. CLEC and Malheur 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. Malheur 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; and

17.2.6 the specific location requested.

17.3 Within two (2) business days of its receipt, Malheur shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Malheur 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, Malheur will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) Days of its receipt of the BFR and all information necessary to process it, Malheur shall provide to CLEC an analysis of the BFR. The analysis shall specify Malheur'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 Malheur 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, Malheur shall advise CLEC as soon as reasonably possible of that fact, and Malheur 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 Malheur 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) 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) Days after Malheur notifies CLEC that the BFR qualifies under the Act, Malheur shall provide to CLEC a BFR quotation. The BFR quotation 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 CLEC has sixty (60) business days upon receipt of the BFR quotation, 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 Malheur 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 Malheur 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. Malheur 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 Malheur 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, Malheur shall provide CLEC with Malheur'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 Malheur cannot obtain a release from its vendors within seven (7) business days, in which case Malheur will make the data available as soon as Malheur receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Malheur under the non-disclosure sections of this Agreement.

17.15 Malheur 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. Malheur shall make available a topical list of the BFRs that it has received from CLECs. 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. Malheur 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. Malheur 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 Malheur 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 prior to the date of request will be considered accepted and no longer subject to Audit. In the event an audit is initiated, the Parties agree to retain records of all transactions under this Agreement for at least twenty-four (24) months and all subsequent transactions will also be subject to audit.

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 requesting Party shall be borne by the non-requesting 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 Malheur 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, Malheur 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 Malheur, 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 quotation for CLEC's portion of a specific job will be provided to CLEC. The quotation 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 Malheur construct the facilities, Malheur 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 Malheur receives the required payment.

**Section 20.0 – INTENTIONALLY LEFT BLANK**

## **Section 21.0 - NETWORK STANDARDS**

21.1 The Parties recognize that Malheur services and Network Elements have been purchased and deployed, over time, to Telcordia and Malheur technical standards. Specification of standards is built into the Malheur purchasing process, whereby vendors incorporate such standards into the equipment Malheur purchases. Malheur 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-1428-CORE Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Toll Free Service

GR-1432-CORE CCSNIS Supporting TCAP

GR-317-CORE Call Control Using Integrated Services Network Digital User Part (ISDNUP)

GR-905-CORE CCSNIS Supporting Network Interconnection, Message Transfer Part (MTP), and ISUP

GR-1357-CORE Switched Fractional DS1

TR-TSY-000540 Tandem Supplement

GR-305-CORE

GR-1429-CORE CCSNIS Supporting Call Management Services

FR-64 LATA Switching System Generic Requirement (LSSGR)

GR-334-CORE Switched Access Service

TR-NWT-000335 Voice Grade Special Access Services

TR-TSY-000529 Public Safety LSSGR

TR-NWT-000505 LSSGR Call Processing

FR-NWT-000271 OSSGR

TR-NWT-001156 OSSGR Operator Subsystem

SR-TSY-001171 Methods and Procedures for System Reliability Analysis

**21.3.2 Transport**

FR-440 Transport System Generic Requirements (TSGR)

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) Transport Systems: Common Generic Criteria

TR-NWT-000507 LSSGR: Transmission

TR-NWT-000776 NID for ISDN Subscriber Access

GR-342-CORE 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 (IDLC) Systems

TR-NWT-000393 Generic Requirements for ISDN Basic Access Digital Subscriber Lines

GR-253-CORE SONET Transport Systems: Common Generic Criteria

TR-TSY-000673 Operations Interface for an IDLC System

GR-303-CORE Integrated Digital Loop Carrier System Generic Requirements

TR-TSY-000008 Digital Interface Between the SLC 96 Digital Loop Carrier System and a Local Digital Switch

TA-TSY-000120 Subscriber Premises or Network Ground Wire

GR-49-CORE Generic Requirements for Outdoor Telephone Network Interface Devices (NID)

TR-NWT-000937 Generic Requirements for Building Entrance Terminals

TR-NWT-000133 Generic Requirements for Network Inside Wiring

ANSI T1.417, Spectrum Management for Loop Transmission Systems

#### **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.

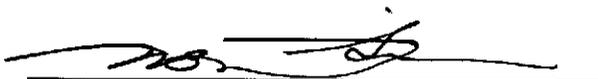
21.4 The Parties will cooperate in the development of national standards for Interconnection elements as the competitive environment evolves. Recognizing that there are no current national standards for Interconnection Network Elements, Malheur relies on standards developed by Qwest. Malheur provides all of its Technical Publications at no charge via web site: <http://www.qwest.com/techpub/>.

**Section 22.0 - SIGNATURE PAGE**

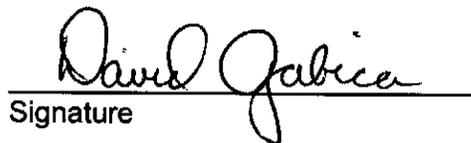
By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

**Lightspeed Networks, Inc.  
dba LS Network**

**Malheur Corporation**



Signature



Signature

MICHAEL WEIDMAN  
Name Printed/Typed

DAVID GARICA  
Name Printed/Typed

PRESIDENT & CEO  
Title

PRESIDENT  
Title

9/30/2008  
Date

10/9/08  
Date

**Negotiation's Template Exhibit A  
Oregon**

				Select Traffic Type	EAS / Local Traffic Reciprocal Compensation Election				
New				Options	Options		Notes		
				Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
				Wholesale Discount Percentage Recurring Charges		Wholesale Discount Percentage Nonrecurring Charges			
<b>6.0</b>	<b>Resale</b>								
	<b>6.1</b>	<b>Wholesale Discount Rates</b>							
		6.1.1	Basic Exchange Residential Line Service	17.00%		17.00%	B, 6		B, 6
		6.1.2	Basic Exchange Business Line Service / PBX	17.00%		17.00%	B, 6		B, 6
		6.1.3	IntraLATA Toll	17.00%		17.00%	B, 6		B, 6
		6.1.4	Package / Special Services (e.g., Centrex, ISDN, DSS, Frame Relay Services, ACS)	17.00%		17.00%	B, 6		B, 6
		6.1.5	Listings, CO Features & Information Services	17.00%		17.00%	B, 6		B, 6
		6.1.6	Private Line	17.00%		17.00%	B, 6		B, 6
		6.1.7	Public Access Line (PAL) Service	17.00%		17.00%	B, 6		B, 6
	<b>6.2</b>	<b>Customer Transfer Charge (CTC)</b>							
		6.2.1	CTC for POTS Service						
			6.2.1.1 Residential / Business						
			6.2.1.1.1 First Line						
			6.2.1.1.1.1 Installation, Manual			\$17.09			12
			6.2.1.1.1.2 Intentionally Left Blank						
			6.2.1.1.1.3 Installation, Mechanized			\$0.71			12
			6.2.1.1.2 Each Additional						
			6.2.1.1.2.1 Installation, Manual			\$2.85			12
			6.2.1.1.2.2 Intentionally Left Blank						
			6.2.1.1.2.3 Installation, Mechanized			\$0.14			12
		6.2.2	CTC for Private Line Transport Services						
		6.2.2.1	First Circuit			\$35.33			12
		6.2.2.2	Additional Circuit, per Circuit, same CSR			\$35.33			12
		6.2.3	CTC for Advanced Communications Services, per Circuit			\$54.12			12
<b>7.0</b>	<b>Interconnection</b>								
	<b>7.1</b>	<b>Entrance Facilities</b>							
		7.1.1	Intentionally Left Blank						
		7.1.2	DS1	\$87.37		\$354.56	A		#
		7.1.3	DS3	\$363.42		\$361.10	A		#
	<b>7.2</b>	<b>LIS EICT</b>							
		7.2.1	Per DS1	\$0.00		\$0.00	5		5
		7.2.2	Per DS3	\$0.00		\$0.00	5		5
	<b>7.3</b>	<b>Direct Trunked Transport</b>							
		7.3.1	DS0 (Recurring Fixed & per Mile)						
		7.3.1.1	0 Miles	\$0.00	\$0.00		E	E	
		7.3.1.2	Over 0 to 8 Miles	\$19.74	\$0.09		E	E	
		7.3.1.3	Over 8 to 25 Miles	\$19.74	\$0.08		E	E	
		7.3.1.4	Over 25 to 50 Miles	\$19.74	\$0.11		E	E	
		7.3.1.5	Over 50 Miles	\$19.74	\$0.08		E	E	
		7.3.2	DS1 (Recurring Fixed & per Mile)						
		7.3.2.1	0 Miles	\$0.00	\$0.00		E	E	
		7.3.2.2	Over 0 to 8 Miles	\$37.94	\$0.49		E	E	
		7.3.2.3	Over 8 to 25 Miles	\$37.94	\$0.85		E	E	
		7.3.2.4	Over 25 to 50 Miles	\$37.94	\$1.16		E	E	
		7.3.2.5	Over 50 Miles	\$37.94	\$1.17		E	E	
		7.3.3	DS3 (Recurring Fixed & per Mile)						
		7.3.3.1	0 Miles	\$0.00	\$0.00		E	E	
		7.3.3.2	Over 0 to 8 Miles	\$253.13	\$9.95		E	E	
		7.3.3.3	Over 8 to 25 Miles	\$253.13	\$10.19		E	E	
		7.3.3.4	Over 25 to 50 Miles	\$253.13	\$14.27		E	E	
		7.3.3.5	Over 50 Miles	\$253.13	\$21.11		E	E	
	<b>7.4</b>	<b>Multiplexing</b>							
		7.4.1	DS1 to DS0	\$212.76			E		
		7.4.1.1	DS1 to DS0 Manual			\$165.28			F
		7.4.1.2	DS1 to DS0 Mechanized			\$97.28			F
		7.4.2	DS3 to DS1	\$203.54			E		
		7.4.2.1	DS3 to DS1 Manual			\$161.56			F
		7.4.2.2	DS3 to DS1 Mechanized			\$93.97			F
	<b>7.5</b>	<b>Trunk Nonrecurring Charges</b>							
		7.5.1	DS0 Interface						

**Negotiation's Template Exhibit A  
Oregon**

					Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
		7.5.1.1	First Trunk							
			7.5.1.1.1	Manual			\$364.19			F
			7.5.1.1.2	Mechanized			\$313.49			F
		7.5.1.2	Each Additional Trunk							
			7.5.1.2.1	Manual			\$44.96			F
			7.5.1.2.2	Mechanized			\$44.96			F
		7.5.2	DS1 Interface							
			7.5.2.1	First Trunk						
				7.5.2.1.1	Manual		\$338.80			F
				7.5.2.1.2	Mechanized		\$288.11			F
			7.5.2.2	Each Additional Trunk						
				7.5.2.2.1	Manual		\$23.55			F
				7.5.2.2.2	Mechanized		\$23.55			F
		7.5.3	DS3 Interface							
			7.5.3.1	First Trunk						
				7.5.3.1.1	Manual		\$337.87			F
				7.5.3.1.2	Mechanized		\$287.24			F
			7.5.3.2	Each Additional Trunk						
				7.5.3.2.1	Manual		\$23.11			F
				7.5.3.2.2	Mechanized		\$23.11			F
	<b>7.6</b>	<b>Exchange Service (EAS / Local) Traffic</b>								
		7.6.1	End Office Call Termination, per Minute of Use		\$0.0013301			A		
		7.6.2	Tandem Switched Transport, per Minute of Use		\$0.00069			#		
		7.6.3	Tandem Transmission, per Minute of Use (Recurring Fixed & per Mile)							
			7.6.3.1	Over 0 to 8 Miles	\$0.000372	\$0.000005		A	A	
			7.6.3.2	Over 8 to 25 Miles	\$0.000372	\$0.000007		A	A	
			7.6.3.3	Over 25 to 50 Miles	\$0.000372	\$0.000008		A	A	
			7.6.3.4	Over 50 Miles	\$0.000372	\$0.000012		A	A	
	<b>7.7</b>	<b>Local Traffic - FCC - ISP Rate Caps</b>								
		7.7.1	Minute Of Use as of June 14, 2003, rate in effect until further FCC action		\$0.0007			4		
	<b>7.8</b>	<b>Miscellaneous Charges</b>								
		7.8.1	Expedite Charge (LIS Trunks)					Qwest's Oregon Access Service Tariff		
		7.8.2	Cancellation Charge (LIS Trunks)					Qwest's Oregon Access Service Tariff		
		7.8.3	Additional Testing (LIS Trunks)					Qwest's Oregon Access Service Tariff		
	<b>7.9</b>	<b>Transit Traffic</b>								
		7.9.1	Local & IntraLATA Toll Transit, per Minute of Use		\$0.0045			2, 10		
		7.9.2	Intentionally Left Blank							
		7.9.3	Intentionally Left Blank							
		7.9.4	Category 11 Mechanized Record Charge, per Record							
			7.9.4.1	Mechanized Transit Records	\$0.0025			2, 10		
	<b>7.10</b>	<b>Jointly Provided Switched Access Services</b>								
		7.10.1	Mechanized Access Records		\$0.001549			12		
	<b>7.11</b>	<b>IntraLATA Toll Traffic</b>								
					Qwest's Oregon Access Service Tariff	Qwest's Oregon Access Service Tariff				
<b>8.0</b>	<b>Collocation</b>									
	<b>8.1</b>	<b>All Collocation</b>								
		8.1.1	Planning and Engineering							
			8.1.1.1	Intentionally Left Blank						
			8.1.1.2	Cable Augment Quote Preparation Fee			\$1,608.58			1
		8.1.2	Entrance Facility							

**Negotiation's Template Exhibit A  
Oregon**

					Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
	8.1.2.1	Virtual Standard, per Fiber Pair								
	8.1.2.1.1	Manhole, per Month, per Manhole			\$27.61			G		
	8.1.2.1.2	Handhold, per Month, per Handhold			\$15.22			G		
	8.1.2.1.3	Conduit / Innerduct, Entrance Enclosures to the Company Cable Vault,			\$0.42			G		
	8.1.2.1.4	Core Drill, per Occurrence					\$363.13			G
	8.1.2.1.5	Riser, Vault to Equipment, per Foot			\$0.47			G		
	8.1.2.1.6	Fiber Optic Cable, per 24, per Foot			\$0.05			G		
	8.1.2.1.7	Fiber Placement in Conduit and Riser, per Foot					\$1.66			G
	8.1.2.1.8	Copper 25 Pair, per Foot			\$0.012			G		
	8.1.2.1.9	Copper Placement Conduit and Riser, per Foot					\$1.66			G
	8.1.2.1.10	Coax Placement, per Foot			\$0.20			G		
	8.1.2.2	Cageless Standard Shared, per Fiber			\$5.92		\$613.33	1		1
	8.1.2.3	Cross Connect, per Fiber			\$6.09		\$723.26	1		1
	8.1.2.4	Express, per Cable			\$96.38		\$9,415.02	1		1
	8.1.3	Cable Splicing								
	8.1.3.1	Fiber, per Set-Up					\$153.50			1
	8.1.3.2	Per Fiber Spliced					\$14.94			1
	8.1.3.3	Copper, per Set-Up					\$91.27			G
	8.1.3.4	Per Copper Spliced					\$14.94			1
	8.1.4	Power								
	8.1.4.1	Power Plant								
	8.1.4.1.1	Less Than 60 Amps, per Amp Ordered			\$11.95			1		
	8.1.4.1.2	Equal To or Greater Than 60 Amps, per Amp Ordered			\$9.31			1		
	8.1.4.2	Power Usage								
	8.1.4.2.1	Less Than or Equal To 60 Amps, per Amp Ordered			\$2.16			1		
	8.1.4.2.2	Greater Than 60 Amps, per Amp Ordered or Used			\$4.33			1		
	8.1.5	AC Power Feed								
	8.1.5.1	AC Power Feed, per Amp, per Month								
	8.1.5.1.1	120 V			\$19.98			1		
	8.1.5.1.2	208 V, Single Phase			\$34.63			1		
	8.1.5.1.3	208 V, Three Phase			\$59.92			1		
	8.1.5.1.4	240 V, Single Phase			\$39.96			1		
	8.1.5.1.5	240 V, Three Phase			\$69.13			1		
	8.1.5.1.6	480 V, Three Phase			\$138.27			1		
	8.1.5.2	AC Power Feed, per Foot, per Month								
	8.1.5.2.1	20 Amp, Single Phase			\$0.0124		\$8.20	1		1
	8.1.5.2.2	20 Amp, Three Phase			\$0.0153		\$10.17	1		1
	8.1.5.2.3	30 Amp, Single Phase			\$0.0133		\$8.85	1		1
	8.1.5.2.4	30 Amp, Three Phase			\$0.0183		\$12.15	1		1
	8.1.5.2.5	40 Amp, Single Phase			\$0.0157		\$10.40	1		1
	8.1.5.2.6	40 Amp, Three Phase			\$0.0216		\$14.32	1		1
	8.1.5.2.7	50 Amp, Single Phase			\$0.0186		\$12.34	1		1
	8.1.5.2.8	50 Amp, Three Phase			\$0.0260		\$17.23	1		1
	8.1.5.2.9	60 Amp, Single Phase			\$0.0210		\$13.96	1		1
	8.1.5.2.10	60 Amp, Three Phase			\$0.0299		\$19.83	1		1
	8.1.5.2.11	100 Amp, Single Phase			\$0.0260		\$17.28	1		1
	8.1.5.2.12	100 Amp, Three Phase			\$0.0407		\$26.98	1		1
	8.1.6	Inspector Labor, per Half Hour								
	8.1.6.1	Regular Hours Rate					\$22.00			G
	8.1.6.2	After Hours Rate, minimum 3 Hours					\$35.74			1
	8.1.7	Intentionally Left Blank								
	8.1.8	Collocation Terminations								
	8.1.8.1	Shared Access								
	8.1.8.1.1	DS0								
	8.1.8.1.1.1	Cable Placement, per 100 Pair Block			\$0.37		\$230.24	1		1
	8.1.8.1.1.2	Cable Placement, per Termination			\$0.02		\$9.21	1		1
	8.1.8.1.1.3	Cable, per 100 Pair Block			\$0.52		\$321.83	1		1
	8.1.8.1.1.4	Cable, per Termination			\$0.01		\$6.44	1		1
	8.1.8.1.1.5	Blocks, per 100 Pair Block			\$0.91		\$561.07	1		1
	8.1.8.1.1.6	Blocks, per Termination			\$0.02		\$11.22	1		1
	8.1.8.1.1.7	Block Placement, per 100 Pair Block			\$0.39		\$242.31	1		1
	8.1.8.1.1.8	Block Placement, per Termination			\$0.01		\$4.85	1		1
	8.1.8.1.2	DS1								
	8.1.8.1.2.1	Cable Placement, per 28 DS1s			\$0.60		\$399.70	1		1
	8.1.8.1.2.2	Cable Placement, per Termination			\$0.06		\$42.98	1		1
	8.1.8.1.2.3	Cable, per 28 DS1s			\$0.56		\$371.50	1		1
	8.1.8.1.2.4	Cable, per Termination			\$0.06		\$39.95	1		1
	8.1.8.1.2.5	Panel, per 28 DS1s			\$0.39		\$256.52	1		1
	8.1.8.1.2.6	Panel, per Termination			\$0.05		\$30.97	1		1
	8.1.8.1.2.7	Panel Placement, per 28 DS1s			\$0.12		\$82.31	1		1
	8.1.8.1.2.8	Panel Placement, per Termination			\$0.01		\$8.85	1		1

**Negotiation's Template Exhibit A  
Oregon**

						Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
			8.1.8.1.3	DS3							
			8.1.8.1.3.1	Cable Placement, per Termination	\$0.22		\$147.89	1			1
			8.1.8.1.3.2	Cable, per Termination	\$0.36		\$239.90	1			1
			8.1.8.1.3.3	Connector, per Termination	\$0.37		\$245.44	1			1
			8.1.8.1.3.4	Connector Placement, per Termination	\$0.03		\$19.88	1			1
			8.1.8.1.4	Fiber							
			8.1.8.1.4.1	Terminations, per 12 Fibers	\$15.01		\$1,670.87	1			1
			8.1.8.1.4.2	Additional Connector, if Applicable	\$0.68		\$454.34	1			1
			8.1.8.1.4.3	Cable Racking, Shared, per 12 Fibers	\$23.49			1			
			8.1.8.1.4.4	Cable Racking, Dedicated	\$2.38		\$1,582.66	1			1
	8.1.9	Security Charges									
		8.1.9.1	Access Card, per Employee		\$0.83			1			
		8.1.9.2	Card Access, per Employee, per Central Office		\$8.40			1			
	8.1.10	Composite Clock / Central Office Synchronization									
		8.1.10.1	Synchronization - Composite Clock, per Port		\$8.10			1			
	8.1.11	Intentionally Left Blank									
	8.1.12	Space Availability Report Charge					\$383.94				1
	8.1.13	Collocation Space Reservation Fee								Charge will be 25% of Nonrecurring Fee	
	8.1.14	Collocation Space Option Administration Fee					\$1,308.22				1
	8.1.15	Collocation Space Option Fee			\$2.00			1			
	8.1.16	Joint Inventory Visit Fee, per Visit					\$1,869.49				1
	8.1.17	Intentionally Left Blank									
	8.1.18	Intentionally Left Blank									
	8.1.19	Intentionally Left Blank									
	8.1.20	Splitter Collocation									
		8.1.20.1	Tie Cable Reclassification							ICB	3
		8.1.20.2	Splitter Shelf Charge		\$4.27		\$545.06	1			1
		8.1.20.3	Engineering				\$1,492.47				1
		8.1.20.4	Splitter TIE Cable Connections								
			8.1.20.4.1	Splitter in the Common Area - Data to 410 Block	\$4.47		\$2,967.93	1			1
			8.1.20.4.2	Splitter in the Common Area - Data Direct to CLEC	\$4.74		\$3,146.62	1			1
			8.1.20.4.3	Splitter on the IDF - Data to 410 Block	\$1.39		\$921.50	1			1
			8.1.20.4.4	Splitter on the IDF - Data Direct to CLEC	\$2.70		\$1,791.83	1			1
			8.1.20.4.5	Splitter on the MDF - Data to 410 Block	\$1.43		\$951.29	1			1
			8.1.20.4.6	Splitter on the MDF - Data Direct to CLEC	\$3.20		\$2,121.78	1			1
		8.1.20.5	Splitter Charge							ICB	3
	<b>8.2</b>	<b>Virtual Collocation</b>									
		8.2.1	Planning and Engineering								
			8.2.1.1	Quote Preparation Fee			\$4,951.46				1
		8.2.2	Maintenance Labor, per Half Hour								
			8.2.2.1	Regular Hours Rate			\$20.48				G
			8.2.2.2	After Hours Rate			\$43.81				1
		8.2.3	Training Labor, per Half Hour								
			8.2.3.1	Regular Hours Rate			\$23.98				G
		8.2.4	Bay Space								
			8.2.4.1	Equipment Bay, per Shelf	\$5.61					G	
			8.2.4.2	Virtual Space Construction							
				8.2.4.2.1	Initial Bay	\$24.74	\$16,418.31	1			1
				8.2.4.2.2	Each Additional Bay	\$4.64	\$3,081.02	1			1
			8.2.4.3	Virtual Cable Racking, per Shelf	\$0.63		\$415.75	1			1
		8.2.5	Engineering Labor, per Half Hour								
			8.2.5.1	Regular Hours Rate			\$25.79				G

**Negotiation's Template Exhibit A  
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					Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
		8.2.5.2	After Hours Rate				\$48.90			1
	8.2.6	Installation Labor, per Half Hour								
		8.2.6.1	Regular Hours Rate				\$20.48			G
		8.2.6.2	After Hours Rate				\$46.43			1
	8.2.7	Rent								
		8.2.7.1	Floor Space Rent, per Square Foot		\$3.07			1		
	8.2.8	Intentionally Left Blank								
	8.2.9	Power Plant								
		8.2.9.1	-48 Volt DC Power Cables, per Foot, per A and B Feed							
			8.2.9.1.1	20 Amp Power Feed	\$0.28		\$50.00	G		G
			8.2.9.1.2	40 Amp Power Feed	\$0.38		\$68.81	G		G
			8.2.9.1.3	60 Amp Power Feed	\$0.48		\$86.42	G		G
		8.2.9.2	-48 Volt DC Power Cables, per Feed							
			8.2.9.2.1	30 Amp Power Feed	\$7.42		\$4,924.30	1		1
			8.2.9.2.2	100 Amp Power Feed	\$26.77		\$17,765.33	1		1
			8.2.9.2.3	200 Amp Power Feed	\$49.38		\$33,069.98	1		1
			8.2.9.2.4	300 Amp Power Feed	\$78.36		\$52,000.64	1		1
			8.2.9.2.5	400 Amp Power Feed	\$111.26		\$73,834.01	1		1
		8.2.9.3	-48 Volt DC Power Usage, per Ampere, per Month		\$7.52			G		
	8.2.10	Backup AC Power Feed								
		8.2.10.1	AC Power Feed, per Watt, per Month		\$0.06			G		
	<b>8.3</b>	<b>Cageless Physical Collocation</b>								
		8.3.1	Planning and Engineering							
			8.3.1.1	Quote Preparation Fee			\$4,956.18			1, 7
		8.3.2	Space Construction and Site Preparation							
			8.3.2.1	Site Preparation Fee	ICB		ICB	3		3
			8.3.2.2	Space Construction for 1 Bay	\$29.38		\$19,499.33	1		1
			8.3.2.3	Intentionally Left Blank						
			8.3.2.4	Intentionally Left Blank						
			8.3.2.5	Space Construction Adjustment						
				8.3.2.5.1	Each Additional Bay	\$4.64	\$3,081.02	1		1
				8.3.2.5.2	Adjustment to use a Single Bay - Change to Standard Design	(\$4.64)	(\$3,081.02)	1		1
			8.3.2.6	Intentionally Left Blank						
			8.3.2.7	-48 Volt DC Power Cables, per Feed						
				8.3.2.7.1	20 Amp Power Feed	\$6.52	\$4,324.98	1		1
				8.3.2.7.2	30 Amp Power Feed	\$7.42	\$4,924.30	1		1
				8.3.2.7.3	40 Amp Power Feed	\$8.96	\$5,947.37	1		1
				8.3.2.7.4	60 Amp Power Feed	\$15.87	\$10,533.02	1		1
				8.3.2.7.5	100 Amp Power Feed	\$26.77	\$17,765.33	1		1
				8.3.2.7.6	200 Amp Power Feed	\$49.83	\$33,069.98	1		1
				8.3.2.7.7	300 Amp Power Feed	\$78.36	\$52,000.64	1		1
				8.3.2.7.8	400 Amp Power Feed	\$111.26	\$73,834.01	1		1
			8.3.2.9	Cageless Bay Fees						
				8.3.2.9.1	Bay, per Bay		\$2024.15			1
				8.3.2.9.2	2.5 Inch Spacer Fee, per Spacer		\$267.26			1
				8.3.2.9.3	5 Inch Spacer Fee, per Spacer		\$280.81			1
	8.3.3	Rent								
		8.3.3.1	Floor Space Lease, per Square Foot		\$3.07			1		
	8.3.4	Intentionally Left Blank								
	8.3.5	Humidification, per Leased Physical Space			\$56.45			G		
	<b>8.4</b>	<b>Intentionally Left Blank</b>								
	<b>8.5</b>	<b>Intentionally Left Blank</b>					ICB			3
	<b>8.6</b>	<b>Intentionally Left Blank</b>								
	<b>8.7</b>	<b>CLEC-to-CLEC</b>								
		8.7.1	Design Engineering & Installation, Mechanized - No Cables							
			8.7.1.1	Fiber Flat Charge			\$1,362.00			1
			8.7.1.2	Flat Charge			\$717.46			1
		8.7.2	Cable Racking, per Request							
			8.7.2.1	DS0	\$44.60			1		
			8.7.2.2	DS1	\$185.34			1		
			8.7.2.3	DS3	\$29.12			1		
			8.7.2.4	Fiber	\$113.66			1		

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					Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
	8.7.3	Virtual Connections (if Applicable - Connections Only; No Cables)								
	8.7.3.1	DS0, per 100 Connections					\$214.54			1
	8.7.3.2	DS1, per 28 Connections					\$101.03			1
	8.7.3.3	DS3, per 1 Connection					\$6.51			1
	8.7.3.4	Fiber Connections, per Fiber Spliced					\$14.94			1
	8.7.4	Cable Hole, if Applicable					\$485.15			1
	8.7.5	CLEC-to-CLEC Cross-Connection					\$168.37			1
<b>8.8</b>	<b>Interconnection Distribution Frame (ICDF) Collocation</b>									
	8.8.1	Quote Preparation Fee					\$1,608.58			1
	8.8.2	DS0 Circuit, per 200 Legs			\$20.29		\$2,204.17	1		1
	8.8.3	DS1 Circuit, per Two Legs			\$1.01		\$71.26	1		1
	8.8.4	DS3 Circuit, per Two Legs			\$10.13		\$1,225.77	1		1
	8.8.5	Fiber Circuit, per Two Legs			\$2.65		\$245.70	1		1
<b>8.9</b>	<b>Collocation Cancellation</b>									
	8.9.1	Additional Labor Other, per Half Hour or fraction thereof (see rates in 9.20)								
	8.9.1.1	Additional Labor - Basic					\$30.68			15
	8.9.1.2	Additional Labor - Overtime					\$40.84			15
	8.9.1.3	Additional Labor - Premium					\$51.01			15
	8.9.2	Additional Dispatch, per Order					\$128.56			15
<b>8.10</b>	<b>Microwave Entrance Facility</b>									
					ICB		ICB	3		3
<b>8.11</b>	<b>Intentionally Left Blank</b>									
<b>8.12</b>	<b>Intentionally Left Blank</b>									
<b>8.13</b>	<b>DC Power Reduction and Restoration</b>									
	8.13.1	Power Reduction								
	8.13.1.1	Quote Preparation Fee, per Office					\$811.18			1
	8.13.1.2	Power Reduction, with or without Reservation, per Feed Set								
	8.13.1.2.1	Less Than 60 Amps					\$624.52			1
	8.13.1.2.2	Equal To 60 Amps					\$898.00			1
	8.13.1.2.3	Greater Than 60 Amps					\$1,140.52			1
	8.13.1.3	Power Off, per Feed Set, per Secondary Feed					\$802.04			1
	8.13.1.4	Power Maintenance Charge (Reservation Charge), per Fuse Set			\$57.32			1		
	8.13.1.5	Location Change from Power Board to BDFB					ICB			3
	8.13.2	Power Restoration								
	8.13.2.1	Quote Preparation Fee, per Office					\$811.18			1
	8.13.2.2	Power Restoration, applies to Primary & Secondary Feed								
	8.13.2.2.1	Power Restoration with Reservation								
	8.13.2.2.1.1	Less Than 60 Amps					\$624.52			1
	8.13.2.2.1.2	Equal To 60 Amps					\$898.00			1
	8.13.2.2.1.3	Greater Than 60 Amps					\$1,140.52			1
	8.13.2.2.2	Power Restoration without Reservation					ICB			1
	8.13.2.3	Location Change from Power Board to BDFB					ICB			3
<b>8.14</b>	<b>Collocation Transfer of Responsibility</b>									
	8.14.1	Intentionally Left Blank								
	8.14.2	Assessment Fee, per Request					\$1,195.12			1
	8.14.3	Network System Administration Fee, per Request					\$1,813.26			1
	8.14.4	Transfer of Responsibility applies to Wireline & Wireless Local Interconnection Trunks, UDIT,					\$36.81			1
	8.14.5	Transfer of Responsibility applies to Unbundled Loop, Subloop, Loop Splitting, Loop Mux Combo,					\$36.81			1
<b>8.15</b>	<b>Collocation Available Inventory</b>									
	8.15.1	Standard Sites								
	8.15.1.1	Removal of Terminations								
	8.15.1.1.1	DS0, per 100 Terminations					ICB			3
	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
	8.15.2	Special Sites								
	8.15.2.1	Special Site Assessment Fee					\$1,195.12			1
	8.15.2.2	Network Systems Assessment Fee					\$1,819.26			1
	8.15.2.3	Site Survey Fee					\$169.97			1
	8.15.3	Re-usable Elements					ICB			3
	8.15.4	Quote Preparation Fee (QPF)								
	8.15.4.1	Cageless (see rate in 8.3.1.1)					\$4,956.18			14
	8.15.4.2	Caged (see rate in 8.4.1.1)					\$5,403.92			14

**Negotiation's Template Exhibit A  
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					Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
<b>8.16</b>	<b>Collocation Decommissioning (see rates in 9.20)</b>									
	8.16.1	Additional Labor other, per Half Hour or fraction thereof								
		8.16.1.1	Additional Labor Other - Basic				\$30.68			15
		8.16.1.2	Additional Labor Other - Overtime				\$40.84			15
		8.16.1.3	Additional Labor Other - Premium				\$51.01			15
	8.16.2	Additional Dispatch, per Order					\$128.56			15
<b>8.17</b>	<b>Joint Testing</b>									
	8.17.1	Set-Up Fee (see rate in 8.2.2.1 with a one hour minimum)					\$40.96			15
	8.17.2	Test Time Fee, per Half Hour (see rate in 8.2.2.1)					\$20.48			15
<b>9.0</b>	<b>Unbundled Network Elements (UNEs)</b>									
<b>9.1</b>	<b>Interconnection Tie Pairs (ITP) - Per Each Termination</b>									
	9.1.1	DS0				\$0.92		E		
		9.1.1.1	Manual				\$5.45			F
		9.1.1.2	Mechanized				\$5.45			F
	9.1.2	DS1				\$6.05		E		
		9.1.2.1	Manual				\$5.45			F
		9.1.2.2	Mechanized				\$5.45			F
	9.1.3	DS3				\$36.35		E		
		9.1.3.1	Manual				\$5.45			F
		9.1.3.2	Mechanized				\$5.45			F
<b>9.2</b>	<b>Unbundled Loops</b>									
	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		\$13.95		D		
			9.2.1.1.2	Zone 2		\$25.20		D		
			9.2.1.1.3	Zone 3		\$56.21		D		
		9.2.1.2	Intentionally Left Blank							
		9.2.1.3	4-Wire Voice Grade Loop							
			9.2.1.3.1	Zone 1		\$27.90		D		
			9.2.1.3.2	Zone 2		\$50.40		D		
			9.2.1.3.3	Zone 3		\$112.42		D		
	9.2.2	Nonloaded Loops					See 9.2.4			
		9.2.2.1	2-Wire Nonloaded Loop							
			9.2.2.1.1	Zone 1		\$13.95		D		
			9.2.2.1.2	Zone 2		\$25.20		D		
			9.2.2.1.3	Zone 3		\$56.21		D		
		9.2.2.2	Intentionally Left Blank							
		9.2.2.3	4-Wire Nonloaded Loop							
			9.2.2.3.1	Zone 1		\$27.90		D		
			9.2.2.3.2	Zone 2		\$50.40		D		
			9.2.2.3.3	Zone 3		\$112.42		D		
		9.2.2.4	Cable Unloading / Bridge Tap Removal				\$0.00			D
	9.2.3	Digital Capable Loops								
		9.2.3.1	Basic Rate ISDN / xDSL-I Capable				See 9.2.4			
			9.2.3.1.1	Zone 1		\$13.95		D		
			9.2.3.1.2	Zone 2		\$25.20		D		
			9.2.3.1.3	Zone 3		\$56.21		D		
		9.2.3.2	Intentionally Left Blank							
		9.2.3.3	DS1 Capable Loop			\$87.37		See 9.2.5	D	
		9.2.3.4	DS3 Capable Loop			\$363.42		See 9.2.6	D	
		9.2.3.5	Intentionally Left Blank							
		9.2.3.6	2-Wire Extension Technology			\$23.54		E		
	9.2.4	Loop Installation Charges for 2 & 4-Wire Analog / Nonloaded, ISDN BRI Capable, xDSL-I Capable, 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						
			9.2.4.1.1.1	Manual			\$47.75			F

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						Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
				9.2.4.1.1.2	Mechanized			\$10.75			F
			9.2.4.1.2	Each Additional							
				9.2.4.1.2.1	Manual			\$16.79			F
				9.2.4.1.2.2	Mechanized			\$10.13			F
			9.2.4.2	Basic Installation with Performance Testing							
			9.2.4.2.1	First							
				9.2.4.2.1.1	Manual			\$100.77			F
				9.2.4.2.1.2	Mechanized			\$63.79			F
			9.2.4.2.2	Each Additional							
				9.2.4.2.2.1	Manual			\$43.71			F
				9.2.4.2.2.2	Mechanized			\$37.05			F
			9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation							
			9.2.4.3.1	First							
				9.2.4.3.1.1	Manual			\$134.72			F
				9.2.4.3.1.2	Mechanized			\$97.74			F
			9.2.4.3.2	Each Additional							
				9.2.4.3.2.1	Manual			\$77.66			F
				9.2.4.3.2.2	Mechanized			\$71.00			F
			9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation							
			9.2.4.4.1	First							
				9.2.4.4.1.1	Manual			\$52.37			F
				9.2.4.4.1.2	Mechanized			\$15.40			F
			9.2.4.4.2	Each Additional							
				9.2.4.4.2.1	Manual			\$21.43			F
				9.2.4.4.2.2	Mechanized			\$14.78			F
			9.2.4.5	Basic Installation with Cooperative Testing							
			9.2.4.5.1	First							
				9.2.4.5.1.1	Manual			\$100.77			1
				9.2.4.5.1.2	Mechanized			\$63.79			1
			9.2.4.5.2	Each Additional							
				9.2.4.5.2.1	Manual			\$43.71			1
				9.2.4.5.2.2	Mechanized			\$37.05			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			\$124.67			#
				9.2.5.1.2	Each Additional			\$107.49			#
			9.2.5.2	Basic Installation with Performance Testing							
			9.2.5.2.1	First							
				9.2.5.2.1.1	Manual			\$278.75			F
				9.2.5.2.1.2	Mechanized			\$240.29			F
			9.2.5.2.2	Each Additional							
				9.2.5.2.2.1	Manual			\$256.49			F
				9.2.5.2.2.2	Mechanized			\$218.77			F
			9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation							
			9.2.5.3.1	First				\$360.33			#
				9.2.5.3.2	Each Additional			\$318.97			#
			9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation							
			9.2.5.4.1	First				\$129.73			#
				9.2.5.4.2	Each Additional			\$112.55			#
			9.2.5.5	Basic Installation with Cooperative Testing							
			9.2.5.5.1	First							
				9.2.5.5.1.1	Manual			\$278.75			1
				9.2.5.5.1.2	Mechanized			\$240.29			1
			9.2.5.5.2	Each Additional							
				9.2.5.5.2.1	Manual			\$256.49			1
				9.2.5.5.2.2	Mechanized			\$218.77			1
		9.2.6	DS3 Loop Installation Charges			See 9.2.3.4					
			9.2.6.1	Basic Installation							
				9.2.6.1.1	First			\$124.67			#
				9.2.6.1.2	Each Additional			\$107.49			#
			9.2.6.2	Basic Installation with Performance Testing							
			9.2.6.2.1	First							
				9.2.6.2.1.1	Manual			\$278.13			F
				9.2.6.2.1.2	Mechanized			\$239.67			F
			9.2.6.2.2	Each Additional							
				9.2.6.2.2.1	Manual			\$256.62			F
				9.2.6.2.2.2	Mechanized			\$218.17			F

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						Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
		9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation								
			9.2.6.3.1	First				\$360.33			#
			9.2.6.3.2	Each Additional				\$318.97			#
		9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation								
			9.2.6.4.1	First				\$129.73			#
			9.2.6.4.2	Each Additional				\$112.55			#
		9.2.6.5	Basic Installation with Cooperative Testing								
			9.2.6.5.1	First							
				9.2.6.5.1.1	Manual			\$278.13			1
				9.2.6.5.1.2	Mechanized			\$239.67			1
			9.2.6.5.2	Each Additional							
				9.2.6.5.2.1	Manual			\$256.62			1
				9.2.6.5.2.2	Mechanized			\$218.17			1
	9.2.7	Intentionally Left Blank									
	9.2.8	Private Line / Special Access to Unbundled Loop Conversion (as is)						\$38.18			12
	<b>9.3</b>	<b>Intentionally Left Blank</b>									
	<b>9.4</b>	<b>Shared Services</b>									
		9.4.1	Intentionally Left Blank								
		9.4.2	Intentionally Left Blank								
		9.4.3	Intentionally Left Blank								
		9.4.4	OSS, per Line			\$3.48			12		
	<b>9.5</b>	<b>Network Interface Device (NID)</b>						\$74.47			12
	<b>9.6</b>	<b>Unbundled Dedicated Interoffice Transport (UDIT)</b>									
		9.6.1	DS0 UDIT (Recurring Fixed & per Mile)								
			9.6.1.1	Over 0 to 8 Miles	\$19.74	\$0.09			E	E	
			9.6.1.2	Over 8 to 25 Miles	\$19.74	\$0.08			E	E	
			9.6.1.3	Over 25 to 50 Miles	\$19.74	\$0.11			E	E	
			9.6.1.4	Over 50 Miles	\$19.74	\$0.08			E	E	
			9.6.1.5	Manual			\$172.66				F
			9.6.1.6	Mechanized			\$99.08				F
		9.6.2	DS1 UDIT (Recurring Fixed & per Mile)								
			9.6.2.1	Over 0 to 8 Miles	\$37.94	\$0.49			E	E	
			9.6.2.2	Over 8 to 25 Miles	\$37.94	\$0.85			E	E	
			9.6.2.3	Over 25 to 50 Miles	\$37.94	\$1.16			E	E	
			9.6.2.4	Over 50 Miles	\$34.94	\$1.17			E	E	
			9.6.2.5	Manual			\$190.69				F
			9.6.2.6	Mechanized			\$117.48				F
		9.6.3	DS3 UDIT (Recurring Fixed & per Mile)								
			9.6.3.1	Over 0 to 8 Miles	\$253.13	\$9.95			E	E	
			9.6.3.2	Over 8 to 25 Miles	\$253.13	\$10.19			E	E	
			9.6.3.3	Over 25 to 50 Miles	\$253.13	\$14.27			E	E	
			9.6.3.4	Over 50 Miles	\$253.13	\$21.11			E	E	
			9.6.3.5	Manual			\$193.66				F
			9.6.3.6	Mechanized			\$120.45				F
		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	\$14.50				12		
		9.6.8	Intentionally Left Blank								
		9.6.9	Intentionally Left Blank								
		9.6.10	Intentionally Left Blank								
		9.6.11	UDIT Rearrangement								
			9.6.11.1	DS0, Single Office			\$171.64				12
			9.6.11.2	DS0, Dual Office			\$215.90				12
			9.6.11.3	High Capacity, Single Office			\$231.72				12
			9.6.11.4	High Capacity, Dual Office			\$260.28				12





**Negotiation's Template Exhibit A  
Oregon**

						Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC	
				9.23.2.7.3.1	Over 0 to 8 Miles	\$253.13	\$9.95		15	15		
				9.23.2.7.3.2	Over 8 to 25 Miles	\$253.13	\$10.19		15	15		
				9.23.2.7.3.3	Over 25 to 50 Miles	\$253.13	\$14.27		15	15		
				9.23.2.7.3.4	Over 50 Miles	\$253.13	\$21.11		15	15		
		9.23.2.8	EEL Multiplexing									
			9.23.2.8.1	DS1 to DS0		\$212.76		\$256.02	E		12	
			9.23.2.8.2	DS3 to DS1		\$203.54		\$256.02	E		12	
		9.23.2.9	EEL DS0 Channel Performance (see rates in 9.6.7)									
			9.23.2.9.1	DS0 Low Side Channelization		\$14.50			15			
			9.23.2.9.2	DS1 / DS0 Low Side Channelization		\$8.27			15			
			9.23.2.9.3	DS0 Channel Cards								
				9.23.2.9.3.1	Code Select Ringdown	\$0.00		\$0.00	E		F	
				9.23.2.9.3.2	Manual Ringdown	\$0.00		\$0.00	E		F	
				9.23.2.9.3.3	Loop Start Signaling - Type LA	\$0.00		\$0.00	E		F	
				9.23.2.9.3.4	Loop Start Signaling - Type LB	\$0.00		\$0.00	E		F	
				9.23.2.9.3.5	Loop Start Signaling - Type LC	\$0.00		\$0.00	E		F	
				9.23.2.9.3.6	Loop Start Signaling - Type LO	\$0.00		\$0.00	E		F	
				9.23.2.9.3.7	Auto Ringdown	\$0.00		\$0.00	E		F	
				9.23.2.9.3.8	Loop Start Signaling - Type LS	\$0.00		\$0.00	E		F	
				9.23.2.9.3.9	No Signaling	\$0.00		\$0.00	E		F	
				9.23.2.9.3.10	E & M Signaling	\$0.00		\$0.00	E		F	
				9.23.2.9.3.11	Ground Start Signaling	\$0.00		\$0.00	E		F	
	9.25	Intentionally Left Blank										
	10.0	Ancillary Services										
	10.1	Local Number Portability										
		10.1.1	LNP Queries			See FCC Tariff #1 Section 20.3.1 & 20		See FCC Tariff #1 Section 20.3.1 & 20				
		10.1.2	LNP Managed Cuts									
			10.1.2.1	Standard Managed Cuts, per Person, per Half Hour				\$27.74			12	
			10.1.2.2	Overtime Managed Cuts, per Person, per Half Hour				\$35.90			12	
			10.1.2.3	Premium Managed Cuts, per Person, per Half Hour				\$44.07			12	
	10.2	911 / E911										
		10.2.1	911 / E911 - Calling			No Charge		No Charge				
	10.3	White Pages Directory Listings, Facility Based Providers										
		10.3.1	Primary Listing			No Charge		No Charge				
		10.3.2	Premium / Privacy Listings			No Charge General Exchange Tariff Rate, Less Wholesale Discount		No Charge General Exchange Tariff Rate, Less Wholesale Discount				
	10.4	Directory Assistance, Facility Based Providers										
		10.4.1	Local Directory Assistance, per Call			\$0.32			2			
		10.4.2	National Directory Assistance, per Call			\$0.32			2			
		10.4.3	Intentionally Left Blank									
		10.4.4	Intentionally Left Blank									
		10.4.5	Call Completion, per Call			\$0.03			2			
	10.5	Directory Assistance List Information										
		10.5.1	Initial Database Load, per Record			\$0.04			2			
		10.5.2	Reload of Database, per Record			\$0.04			2			
		10.5.3	Daily Updates, per Listing			\$0.05			2			
		10.5.4	One-Time Set-Up Fee, per Hour					\$112.51			2	
		10.5.5	Media Charges for File Delivery									
		10.5.5.1	Electronic Transmission, per Record Transmitted			\$0.0020			2			
	10.6	Toll and Assistance Operator Services, Facility Based Providers										
		10.6.1	Operator Assistance, per Call			\$0.50			2			
		10.6.2	Busy Line Verify, per Call			\$0.67			2			
		10.6.3	Busy Line Interrupt			\$0.82			2			
		10.6.4	Call Branding, Set-Up & Recording					\$10,500.00			2	
		10.6.5	Loading Brand, per Switch					\$800.00			2	
	10.7	Access to Poles, Ducts, Conduits and Rights of Way (ROW)										
		10.7.1	Pole Inquiry Fee, per Inquiry					\$356.68			12	
		10.7.2	Innerduct Inquiry Fee, per Inquiry					\$243.80			12	
		10.7.3	ROW Inquiry Fee, per Inquiry					\$395.56			12	
		10.7.4	ROW Document Preparation Fee					\$128.32			12	
		10.7.5	Field Verification Fee, per Pole					\$21.39			12	
		10.7.6	Field Verification Fee, per Manhole					\$199.30			12	

**Negotiation's Template Exhibit A  
Oregon**

				Recurring	Recurring Per Mile	Non-Recurring	REC	REC per Mile	NRC
	10.7.7	Planner Verification, per Manhole				\$17.25			12
	10.7.8	Manhole Verification Inspector, per Manhole				\$96.24			12
	10.7.9	Manhole Make-Ready Inspector, per Manhole				\$256.65			12
	10.7.10	Transfer of Responsibility				\$111.57			12
	10.7.11	Pole Attachment Fee, per Pole Attachment, per Year							
		10.7.11.1 Compliant		\$4.60			4		
		10.7.11.2 Non-Compliant		\$5.35			4		
	10.7.12	Innerduct							
		10.7.12.1 Microduct Occupancy Fee, per Microduct, per Foot, per Year		\$0.2226			1		
		10.7.12.2 Innerduct Occupancy Fee, per Linear Foot, per Year		\$0.4157			4		
	10.7.13	Access Agreement Consideration				\$10.00			2
	10.7.14	Make Ready				ICB			3
<b>12.0</b>	<b>Operational Support Systems</b>								
	<b>12.1</b>	<b>Development and Enhancements, per Order</b>				No Charge At This Time			11
	<b>12.2</b>	<b>Ongoing Operations, per Order</b>				No Charge At This Time			11
	<b>12.3</b>	<b>Daily Usage Record File, per Record</b>		No Charge At This Time			11		
	<b>12.4</b>	<b>Trouble Isolation Charge</b>				See 9.20			
<b>17.0</b>	<b>Bona Fide Request Process</b>								
	<b>17.1</b>	<b>Processing Fee</b>				\$1,933.44			12
<b>NOTES:</b>									
	*	Unless otherwise indicated, all rates are pursuant to Oregon PUC Dockets listed below:							
	A	UM 844 (Order No. 97-239)							
	B	UM 962 (Order No. 02-821)							
	C	UM 773 (Order No. 02-355)							
	D	UT 148/UM 963 (Order No. 00-481)							
	E	UT 138 Ph II Recurring (Order No. 02-184)							
	F	UT 138 Ph III Nonrecurring (Order No. 03-085)							
	G	UT 119 (Order 96-079)							
	#	Voluntary Rate Reduction Docket UM 973. Reductions reflected in the 12/3/02 Exhibit A.							
	1	Rates not addressed in a Cost Docket (estimated TELRIC)							
	2	Market-based rates							
	3	ICB, Individual Case Basis pricing.							
	4	Rates per FCC Guidelines & state legislative rules.							
	5	Qwest has agreed to a bill and keep arrangement for EICT, pursuant to 271 workshops.							
	6	For services where volume and term discounts apply to retail customers, the wholesale discount rate offered shall be the greater of 17% or the discounted retail percentage plus 8.5%. This is pursuant Commission order in Docket UM 962 Order Number 02-821							
	7	The preliminary engineering and planning costs are included in the Caged and Cageless space construction charges. These engineering and planning charges are also included in the Caged and Cageless Quote Preparation Fees (QPF). Upon completion of the collocation construction, tQPF will be credited to the final space construction charge for the collocation job.							
	8	Uses Shared Loop, since Qwest has not implemented deavering for Shared elements, the Exhibit A reflects Zone 1, the lowest rate.							
	9	Market-based prices, All charges and increments shall be the same as the comparable charges and increments provided in Qwest FCC, Retail Tariffs, Catalogs, or Price Lists.							
	10	The provision of transiting services is not required pursuant to Section 251 of the Telecommunications Act. Qwest has chosen to offer this service as part of its interconnection agreement, but this service is not required to be priced according to a TELRIC methodology.							
	11	Qwest will not charge for this element until the Commission has an opportunity to review and approve a rate in a future cost proceeding.							
	12	Rates proposed in UM 1025							
	13	Qwest is unable to bill Manual NRC rates at this time; the corresponding Mechanized NRC rate will be billed instead.							
	14	Rate is from a similar element and is being used because the costs for this element are the same.							
	15	Rate for this element is the same as a rate in a different section of Exhibit A.							

**Exhibit B**

**Intentionally Left Blank**

## **EXHIBIT C**

**See Qwest's Wholesale web-site for the Service Interval Guide.**

## Exhibit D

Date General Information Provided by Malheur: \_\_\_\_\_

General Agreement : \_\_\_\_\_

BAN Number(must be assigned before processing): \_\_\_\_\_

### REVISED MALHEUR RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE 6/29/01

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain CLEC's facilities ("Facilities") to Malheur Home Telephone Company's ("Malheur") Poles, to place Facilities on or within Malheur's Innerduct (collectively "Poles/Innerduct") and to obtain access to Malheur's private right of way ("ROW"), to the extent Malheur has the right to grant such access. This General Information is necessary to determine if Malheur can meet the needs of the CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct".

2. **PROCESS.** The Malheur process is designed to provide the CLEC the information so as to assist CLEC and Malheur to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

2.1 Inquiry Review - Attachment 1.A (Database Search). The CLEC is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Malheur's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the CLEC's Request. Be sure a BAN number is assigned by the Malheur Service Support Representative for each request before sending an Attachment 1.A. To request a BAN number send an email requesting one to: [wsst@qwest.com](mailto:wsst@qwest.com). Include your name, company, phone number, email address, city and state of our inquiry. A BAN number will be assigned to your inquiry and will be emailed to you along with other materials.

As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route must be emailed to [wsst@qwest.com](mailto:wsst@qwest.com) while the fee must be sent to the CLEC Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Malheur central offices, streets, cities, states, lakes, rivers, mountains, etc. Malheur reserves the right to reject illegible or incomplete maps. If CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps. For ROW: Section, Range and Township, to the ¼ section must also be provided.

Malheur will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation (Attachment 1.B) to the CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Malheur will assign a Field Engineer and provide his/her name and phone number to the CLEC. The Field Engineer will check the local database and be available for a joint verification with the CLEC. The Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Malheur facilities and does not indicate whether space is available. This information is provided with Attachment 1.B.

## Exhibit D

In the case of ROW, Malheur will prepare and return a ROW information matrix and a copy of agreements listed in the ROW Matrix, within ten (10) days. The ROW Matrix will identify (a) the owner of the ROW as reflected in Malheur's records, and (b) the nature of each ROW (i.e., publicly recorded and non-recorded). The ROW information matrix will also indicate whether or not Malheur has a copy of the ROW agreement in its possession. Malheur makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

In the case of MDUs, Malheur will prepare and return an MDU information matrix, within ten (10) days, which will identify (a) the owner of the MDU as reflected in Malheur's records, and (b) whether or not Malheur has a copy of the agreement between Malheur and the owner of a specific multi-dwelling unit that grants Malheur access to the multi-dwelling unit in its possession. Malheur makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that the original landowner may not be the current owner of the property. Malheur will redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Malheur provides to CLEC.

If there is no other effective agreement (i.e., an Interconnection Agreement) between CLEC and Malheur concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the CLEC, Malheur will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Malheur right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the CLEC, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. A copy of the signed Attachment 1.B should be emailed to [wsst@qwest.com](mailto:wsst@qwest.com) while the appropriate fees should be sent to the CLEC Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the CLEC by Malheur.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Malheur will deliver to the CLEC an executed and acknowledged Access Agreement to the CLEC in the form attached hereto as Attachment 4 (the "Access Agreement"). In the event that the ROW in question was created by a publicly recorded document and Malheur has a copy of such document in its files, a copy of the Right-of-Way Agreement, as defined in the Access Agreement, will be attached to the Access Agreement and provided to the CLEC at the time of delivery of the Access Agreement. If Malheur does not have a copy of the Right-of-Way Agreement in its possession, the Access Agreement will not have a copy of the Right-of-Way Agreement attached.

Although Malheur will provide the identity of the original grantor of the ROW, as reflected in Malheur's records, the CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement to the Access Agreement. If Malheur does not have a copy of the Right-of-Way Agreement in its records, it is the responsibility of the CLEC to obtain a copy of the Right-of-Way Agreement. If the ROW was created by a publicly recorded

## Exhibit D

document, the CLEC must record the Access Agreement (with the Right-of-Way Agreement attached) in the real property records of the county in which the property is located. If the ROW was created by a grant or agreement that is not publicly recorded, CLEC must provide Malheur with a copy of the properly executed and acknowledged Access Agreement.

Malheur is required to respond to each Attachment 1.B. submitted by CLEC within 35 days of receiving the Attachment 1.B. In the event that Malheur believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable under the interconnection agreement, if any, between Malheur and CLEC.

2.3 Poles/Duct Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Malheur will provide the CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the CLEC and applicable payment for the Make-Ready Fees identified, Malheur will assign the CLEC's requested space; Malheur will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Malheur will notify CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should be emailed to [wsst@qwest.com](mailto:wsst@qwest.com) while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Malheur concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space are considered "blocked". Malheur will consider repair or clearing damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The CLEC may contract separately with a Malheur-approved contractor to complete the construction provided a Malheur inspector inspects the work during and after construction. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The CLEC is not encouraged to sign the Poles/Innerduct Order (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Malheur agrees to issue to CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Malheur. Malheur provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Malheur to construct, install, modify, or place any Poles/Innerduct or other facility for use by the CLEC.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Malheur in determining if Poles/Innerduct space is available to meet the CLEC's request; however, the CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Malheur denies access, Malheur shall do so in writing, specifying the reasons for denial within 45 days of the initial inquiry.

## Exhibit D

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Malheur in searching its databases and preparing the Access Agreement. In the event that complications arise with respect to preparing the Access Agreement or any other aspect of conveying access to Malheur's ROW, the CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

### 3. **DISPUTE RESOLUTION**

3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

3.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

## Exhibit D

### ATTACHMENT 1. A Poles/Innerduct/ or ROW Inquiry Preparation Fee

General Agreement \_\_\_\_\_

BAN Number (one for each route must be assigned before processing): \_\_\_\_\_

Date Submitted: \_\_\_\_\_ Date Replied to CLEC: \_\_\_\_\_

CLEC Name \_\_\_\_\_ Contact name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ e-mail address: \_\_\_\_\_

State and city of inquiry: \_\_\_\_\_

#### Poles/Innerduct Permit Database Search Costs Quotation

(One Mile Minimum)

	<u>Costs</u>	<u>Est. Miles</u>	<u>Total</u>
1. Pole Inquiry Fee (see attached pricing chart) X _____	=		\$ _____
2. Innerduct Inquiry Fee (see attached pricing chart) X _____	=		\$ _____
3. ROW Records Inquiry (see attached pricing chart) X _____	=		\$ _____
4. Estimated Interval for Completion of Items 1, 2 or 3: <u>10</u> Days			
5. Additional requirements of CLEC: _____			

This Inquiry will result in (a) for Poles and Innerduct: a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW, a ROW identification matrix, a quote of the charges for preparation of and consideration for, the necessary Access Agreements, and copies of ROW documents in Malheur's Possession. (c) For Poles, the name and telephone number of the Field Engineer are provided so that the CLEC may contact the Malheur Field engineer and discuss attachment plans. If a field verification of poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the CLEC desires Malheur to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Malheur offers such Poles/Innerduct. Quotes expire in 30 days.

	Malheur Corporation
Signature	Signature
Name Typed or Printed	Name Typed or Printed
Title	Title
Date	Date

This signed form (original) must be sent with a check for the Inquiry amount (to "Malheur") to:  
**Manager, Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112 303-784-0387**

A copy of this form must be sent with two acceptably-detailed maps showing the requested route to:

## Exhibit D

**Service Representative at: [wsst@qwest.com](mailto:wsst@qwest.com). Put "Agree" on signature line.**

Exhibit D

ATTACHMENT 1.B

General Agreement \_\_\_\_\_  
 BAN Number: \_\_\_\_\_

**Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation**

Date Nonrefundable Received: \_\_\_\_\_ Date Replied to CLEC: \_\_\_\_\_

**\*\*NOTE: THIS ATTACHMENT WILL BE COMPLETED BY MALHEUR AND SENT TO THE CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.\*\***

	Estimated Costs	Number	Total Charge
1. Pole Field Verification Fee (10 pole minimum)	_____	_____	\$_____
2. Innerduct Field Verification Fee	_____	_____	\$_____
3. Preparation of private ROW documents	_____	_____	\$_____
4. Access Agreement Prep. and Consideration \$10/ Access Agreement	_____	_____	\$_____
5. Estimated Interval to Complete Items 1 or 2 or 3 and/or 4: _____ Working Days			

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

By signing below and providing payment of the Total Estimated Costs identified above, the CLEC desires Malheur to proceed with the processing of its field survey/preparation of Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Malheur offers such ROW/Poles/Innerduct. The CLEC acknowledges the above costs are estimates only and CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested. Quotes expire in 30 days.

	Malheur Corporation
Signature	Signature
Name Typed or Printed	Name Typed or Printed
Title	Title
Date	Date

The original signed form must be sent with a check for the verification amount to:  
**Manager, CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112**  
 An email copy of this form must be sent to: [wsst@qwest.com](mailto:wsst@qwest.com), with "Agree" on the signature line.

## Exhibit D

### ATTACHMENT 2 Poles/Innerduct Order

General Agreement \_\_\_\_\_

BAN Number: \_\_\_\_\_

**\*\*NOTE: THIS FORM WILL BE COMPLETED BY MALHEUR AND SENT TO CLEC FOR SIGNATURE\*\***

Make-ready Work required: Yes (        ) No (        )

Date Received \_\_\_\_\_

If Yes is checked, estimated Make-ready costs: \$ \_\_\_\_\_

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - \_\_\_\_\_.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, CLEC must:

- a. provide Malheur representative, a final design of splice, racking and slack locations in Malheur utility holes.
- b. tag all equipment located in/on Malheur's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. Pole Attachment, Per Pole	\$ _____ /	_____	\$ _____
2. Innerduct Occupancy, Per Foot	\$ _____	_____	\$ _____
3. Request conf. call for Construction?	___ YES ___ NO		

Please check YES if construction by Malheur is needed for access to Malheur manholes (e.g. core drills, stubouts, not innerduct placement) For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you do not place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2001 HAS BEEN PRORATED TO \_\_\_\_\_ ( /DAY \* DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2001 RECURRING FEE ALONG WITH THIS SIGNED ORDER \_\_\_\_\_

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the CLEC desires Malheur to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which Malheur offers such Poles/Innerduct. By signing this document you are agreeing to the access described herein. Quotes expire in 90 days.

Return this signed form and check to: **Manager, Joint Use Supervisor, Suite 101, 6912 S. Quentin, Englewood, CO 80112.** Send a copy to: **wsst@qwest.com.**

	Malheur Corporation
Signature	Signature
Name Typed or Printed	Name Typed or Printed
Title	Title

Exhibit D

Date		Date
------	--	------

## Exhibit D

### ATTACHMENT 3

General Agreement: \_\_\_\_\_

#### **MALHEUR RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS**

This is an Agreement between \_\_\_\_\_ (“CLEC”) and Malheur Home Telephone Company (“Malheur”), for one or more Orders for the CLEC to obtain access to Malheur’s Right-of-Way (“ROW”) and/or to install/attach and maintain their communications facilities (“Facilities”) to Malheur’s Poles and/or placement of Facilities on or within Malheur’s Innerduct (collectively “Poles/Innerduct”) described in the General Information and CLEC Map, which are incorporated herein by this reference (singularly “Order” or collectively, “Orders”). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Malheur concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

#### **1. SCOPE.**

- 1.1 Subject to the provisions of this Agreement, Malheur agrees to issue to CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Malheur, and/or (b) access to Malheur’s ROW to the extent that (i) such ROW exists, and (ii) Malheur has the right to grant access to the CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Malheur or its predecessors.
- 1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Malheur to construct, install, modify, or place any Poles/Innerduct or other facility for use by CLEC or to obtain any ROW for CLEC’s use.
- 1.3 Malheur agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

**2. TERM.** Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Malheur. This Agreement shall continue during such time CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

#### **3. TERMINATION WITHOUT CAUSE.**

- 3.1 To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.

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- 3.2. Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may have been accruing at the time of termination, including indemnity, warranties, and confidential information.
- 3.3. If Malheur terminates this Agreement for Cause, or if CLEC terminates this Agreement without Cause, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Malheur to remove its Facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Malheur until CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.
- 3.4. If this Agreement or any Order is terminated for reasons other than Cause, then CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Malheur until CLEC's Facilities are physically removed.
- 3.5. Malheur may abandon or sell any Poles/Innerduct at any time by giving written notice to the CLEC. Upon abandonment of Poles/Innerduct, and with the concurrence of the other CLEC(s), if necessary, CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Malheur, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

### **4. CHARGES AND BILLING.**

- 4.1. CLEC agrees to pay Malheur Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.
- 4.2. Malheur has the right to revise Fees, at its sole discretion, upon written notice to CLEC within at least sixty (60) days prior to the end of any annual billing period.

### **5. INSURANCE.** The CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

- 5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
- 5.2. General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the

## Exhibit D

work), broad form property damage and contractual liability with respect to liability assumed by the CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or underpinning. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

- 5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.
- 5.4 Malheur may require the CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Malheur shall be borne by Malheur, and the CLEC shall arrange to have such costs billed separately and directly to Malheur by the insuring carrier(s). Malheur shall be authorized by the CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a whole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.
- 5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Malheur. The CLEC shall forward to Malheur, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Malheur is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to Malheur; (3) certification that underground hazard coverage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The CLEC shall not commence work hereunder until the obligations of the CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the CLEC of any liability hereunder or in any way modify the CLEC's obligations to indemnify Malheur.
- 5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars (\$6,000,000.00). In addition, said policy shall name Malheur and the CLEC/SubCLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Malheur and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.

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- 5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

### **6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.**

- 6.1 Malheur retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Malheur spare conduit include the placement of innerduct, Malheur retains the right to install the number of innerducts required to occupy the conduit structure to its full capacity. In the event Malheur determines that rearrangement of the existing facilities on Poles/Innerduct is required before CLEC's Facilities can be accommodated, the cost of such modification will be included in the CLEC's nonrecurring charges for the associated Poles/Innerduct Order.
- 6.2 CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Malheur does not warrant or represent that providing CLEC with access to the Poles/Innerduct in any way constitutes such legal right. The CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the CLEC's sole expense, in order to perform its obligations under this Agreement. The CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide Malheur with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The CLEC shall comply with all conditions of rights-of-way and Orders.
- 6.3 CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Telcordia Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Malheur's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Malheur premises. CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to Malheur upon written request. CLEC shall within thirty (30) days comply and provide the requested information to Malheur to bring their facilities into compliance with these terms and conditions.
- 6.4 In the event of any service outage affecting both Malheur and CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exist, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.
- 6.5 In the event of an infrastructure outage, the CLEC should contact their Network Maintenance Center at 1-800-223-7881 or the CLEC may contact their Account Manager at the Interconnect Service Center.

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### 7. MODIFICATION TO EXISTING POLES/INNERDUCT.

- 7.1. If CLEC requests Malheur to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the CLEC and Malheur determines in its sole discretion to provide the requested capacity, the CLEC shall pay Malheur the total replacement cost, Malheur's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Malheur. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and CLEC shall be responsible for its pro rata share of the modification cost. Except as set forth herein, CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.
- 7.2. Written notification of modification initiated by or on behalf of Malheur shall be provided to CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not rearrange its facilities within sixty (60) days after receipt of written notice from Malheur requesting such rearrangement, Malheur may perform or cause to have performed such rearrangement and CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

### 8. INSPECTION OF FACILITIES. Malheur reserves the right to make final construction, subsequent and periodic inspections of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Malheur for the cost of such inspections except as specified in Section 8 hereof.

- 8.1. CLEC shall provide written notice to Malheur, at least fifteen (15) days in advance, of the locations where CLEC's plant is to be constructed.
- 8.2. The CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Malheur within five (5) business days of the date(s) of the occupancy.
- 8.3. Malheur shall provide written notification to CLEC within seven (7) days of the date of completion of a final construction inspection.
- 8.4. Where final construction inspection by Malheur has been completed, CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Malheur. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct system, unless Malheur has provided CLEC a written extension to comply. CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing,

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by both parties, Malheur shall perform such corrections and CLEC shall pay Malheur the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken may be made by Malheur.

- 8.5. Once the CLECs facilities occupy Malheur Poles/Innerduct system and Exhibit A has been received by Malheur, Malheur may perform periodic inspections. The cost of such inspections shall be borne by Malheur, unless the inspection reveals any violations, hazards, or conditions indicating that CLEC has failed to comply with the provisions set forth in this Agreement, in which case the CLEC shall reimburse Malheur for full costs of inspection, and re-inspection to determine compliance as required. A CLEC representative may accompany Malheur on field inspections scheduled specifically for the purpose of inspecting CLEC's Facilities; however, CLEC's costs associated with its participation in such inspections shall be borne by CLEC. Malheur shall have no obligation to notify CLEC, and CLEC shall have no right to attend, any routine field inspections.
- 8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the CLEC within thirty (30) days upon completion of the inspection.
- 8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Malheur, and shall not relieve CLEC of any responsibilities, obligations, or liability arising under this Agreement.

### 9. UNAUTHORIZED FACILITIES

- 9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, Malheur, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars (\$200.00) per attachment per Pole or innerduct run between manholes, and require the CLEC to submit in writing, within ten (10) day after receipt of written notification from Malheur of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Malheur within the specified time period, the CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, Malheur may remove the CLEC's facilities without liability, and the cost of such removal shall be borne by the CLEC.
- 9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not CLEC is ordered to continue the occupancy of the Poles/Innerduct system.
- 9.3. No act or failure to act by Malheur with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Malheur of any of its rights or privileges under this Agreement or otherwise.

10. **REMOVAL OF FACILITIES.** Should Malheur, under the provisions of this Agreement, remove CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Malheur will deliver the Facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Malheur. If payment is not received by Malheur within thirty (30) days, CLEC will be deemed to have abandoned such facilities, and Malheur may dispose of said facilities as it determines to be appropriate. If Malheur must dispose of said facilities, such

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action will not relieve CLEC of any other financial responsibility associated with such removal as provided herein. If CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Malheur for previous occupancy have been paid in full. CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by CLEC," each as attached hereto, advising Malheur as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

**11. INDEMNIFICATION AND LIMITATION OF LIABILITIES.** CLEC shall indemnify and hold harmless Malheur, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the CLEC; (2) actual or alleged fault or negligence of the CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by CLEC under this Contract or any product liability claims relating to any material supplied by CLEC under this Contract; (4) failure of CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Malheur, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Malheur or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the CLEC. If both Malheur and the CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the CLEC, if Malheur desires. Malheur shall give the CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the CLEC's request and at the CLEC's expense all information and assistance available to the Malheur for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST MALHEUR BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CLEC, AND THE CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.

11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the

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other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.

11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF MALHEUR BUT SHALL EXTEND TO THE NEGLIGENCE OF MALHEUR WHEN CONCURRENT WITH THAT OF THE CLEC.

11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

### 12. **FORCE MAJEURE**

12.1 The CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

12.2 If such contingency occurs, Malheur may elect:

12.2.1 To terminate this Agreement as to the Order in question; or

12.2.2 To terminate already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 Malheur shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Malheur after the contingency occurs. With respect to Malheur's election of Section 12.2.3 above:

12.3.1 Malheur shall give the CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

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12.3.3 If appropriate, at the Malheur's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 Malheur shall be excused from its performance if prevented by acts or events beyond the Malheur's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

### 13. DISPUTE RESOLUTION.

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224). The CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Malheur's pole pursuant to the terms thereof. The CLEC acknowledges that Malheur will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which CLEC shall remain fully liable.

15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably

## Exhibit D

continue without the terminated provision, the remainder of this Agreement shall continue in effect.

### 16. **GENERAL PROVISIONS.**

- 16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.
- 16.2 This Agreement shall not be assignable by CLEC without the express written consent of Malheur, which shall not be unreasonably withheld. Assignment of this Agreement by CLEC to CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that CLEC must obtain Malheur's consent in any event.
- 16.3 This Agreement benefits CLEC and Malheur. There are no third party beneficiaries.
- 16.4 This Agreement constitutes the entire understanding between CLEC and Malheur with respect to Service provided herein and supersedes any prior agreements or understandings.

## Exhibit D

The parties hereby execute and authorize this Agreement as of the latest date shown below:

CLEC

Malheur

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Title

PRODUCT MANAGER \_\_\_\_\_

Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Address for Notices

Contact:  
Phone:  
FAX:

Address for Notices

Qwest Corporation  
1801 California, Rm. 2330  
Denver, CO 80202

Contact: Manager  
Phone: [303-896-5432](tel:303-896-5432)  
FAX: [303-896-9022](tel:303-896-9022)

Exhibit D

EXHIBIT A

PULLING IN REPORT

This report is to be completed by the CLEC when fiber cable is placed into innerduct. \_\_\_\_\_ 20\_\_

Send to:  
Manager,  
700 W Mineral, Rm IAF12  
Littleton, CO 80120 (303-707-7598)

This is to advise you that pursuant to General Agreement No. \_\_\_\_\_ granted to us under the terms of the Innerduct Agreement dated \_\_\_\_\_, 20\_\_ we have completed installation of the following cable into the following ducts.

Municipality

<u>Location</u>		
<u>From</u>	<u>To</u>	<u>Cable and</u>
<u>Manhole at</u>	<u>Manhole at</u>	<u>Equipment Installed</u>

\_\_\_\_\_  
Name of CLEC  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Receipt of the above report is hereby acknowledged \_\_\_\_\_, 20\_\_.

Malheur  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

1. Reports shall be submitted in duplicate.
2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.
3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit \_\_\_\_, unless a change has been previously authorized in writing by Licensor.



## Exhibit D

EXHIBIT C

### NOTIFICATION OF SURRENDER OR MODIFICATION OF POLE ATTACHMENT ORDER BY CLEC

CLEC: \_\_\_\_\_

Return to:

Manager,  
700 W Mineral, Rm IAF12  
Littleton, CO 80120

In accordance with the terms and conditions of the Agreement between Malheur and CLEC, dated \_\_, 20\_\_, notice is hereby given that the licenses covering attachments to the following poles and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in CLEC's prior notification to Malheur, dated \_\_\_\_\_, 20\_\_) effective \_\_\_\_\_.

	POLE NO.	ASSOC. POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			

Date Notification Received \_\_\_\_\_

Date Modification Received \_\_\_\_\_

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

Name of CLEC

Discontinued:

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

Poles \_\_\_\_\_

Anchors \_\_\_\_\_

Anchor/Guy Strands \_\_\_\_\_ lts: \_\_\_\_\_

## Exhibit D

### ATTACHMENT 4 FORM OF ACCESS AGREEMENT

After recording, please return to:

Manager  
700 W Mineral, Rm IAF12  
Littleton, CO 80120

#### ACCESS AGREEMENT

**THIS ACCESS AGREEMENT** (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **MALHEUR Home Telephone company**, an Oregon corporation, ("Grantor"), whose address is 225 SW 2<sup>nd</sup> Street, Ontario, OR 97914, and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ ("Grantee").

#### RECITALS

- A. This Agreement relates to certain real property (the "Property") located in the County of \_\_\_\_\_ (the "County"), State of \_\_\_\_\_ (the "State").
- B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").
- C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.
- D. Subject to the terms and conditions set forth in this Agreement, Grantor has agreed to convey to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such conveyance.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Right of Access. Grantor hereby conveys to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers,

## Exhibit D

stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights conveyed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

a. Recordation of Agreement. If the Right-of-Way Agreement has been publicly recorded, Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. A legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

b. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a \_\_\_\_\_, duly formed and validly existing under the laws of the State of \_\_\_\_\_. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

## Exhibit D

### 5. Grantee's Covenants.

a. Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation can be observed or performed by Grantor.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition is bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate

## Exhibit D

this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. If the Right of Way Agreement is not publicly recorded, Grantor hereby grants a limited waiver of any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves, and subject to Grantee's and Owner's compliance with the terms and conditions in this paragraph. In all instances, Grantee will use the Right of Way Agreement only for the following purposes: (a) to determine whether Grantor has ownership or control over duct, conduits, or rights-of-way within the property described in the Right of Way Agreement; (b) to determine the ownership of wire within the property described in the Right of Way agreement; or (c) to determine the demarcation point between Grantor facilities and the Owner's facilities in the property described in the agreement. Grantee further agrees that Grantee shall not disclose the contents, terms, or conditions of any agreement provided pursuant to Section 10.8 to any Grantee agents or employees engaged in sales, marketing, or product management efforts on behalf of Grantee. Grantor's waiver of rights, subject to the limitations set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and so long as Grantee and Owner comply with the conditions set forth above, Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

14. Modification; Counterparts. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought. This Agreement may be executed in any number of counterparts, all of which shall constitute but one and the same document.

15. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Exhibit D

16. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT OF APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

*[Signature pages follow]*

Exhibit D

EXECUTED as of the date first written above.

**GRANTOR:**

Witnessed by: \_\_\_\_\_

MALHEUR Home Telephone Company, an Oregon corporation,

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of MALHEUR Home Telephone Company an Oregon corporation.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Exhibit D

EXECUTED as of the date first written above.

**GRANTEE:**

Witnessed by: \_\_\_\_\_, a  
\_\_\_\_\_

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

Name:

Title:

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## Exhibit D

Exhibit D

**EXHIBIT 1**

**Right of Way Agreement**

(This represents the ROW agreement between the Co-Provider and the property owner)

**EXHIBIT E**

**INTENTIONALLY LEFT BLANK**

## EXHIBIT F

### SPECIAL REQUEST PROCESS

1. The Special Request Process shall be used for the following requests:
  - 1.1 Intentionally Left Blank.
  - 1.2 Intentionally Left Blank.
  - 1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Malheur as a standard product and:
    - 1.3.1 that is made up of UNEs that are defined by the FCC or the Commission as a network element to which Malheur is obligated to provide unbundled access, and;
    - 1.3.2 that is made up of UNEs that are ordinarily combined in the Malheur network.
  - 1.4 Requesting an Unbundled Network Element that does not require a technical feasibility analysis and has been defined by the FCC or the State Commission as a network element to which Malheur is obligated to provide unbundled access, but for which Malheur has not created a standard product.
2. Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Malheur will consider the BFR time frame to have started upon receipt of the original Special Request application form.
3. A Special Request shall be submitted in writing and on the appropriate Malheur form, which is located on Qwest's website.
4. Malheur shall acknowledge receipt of the Special Request within two (2) business days of receipt.
5. Malheur shall respond with an analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Malheur network. If the request is for a combination of network elements that are not ordinarily combined in the Malheur network, the analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.
6. Upon request, Malheur shall provide CLEC with Malheur's supporting cost data and/or studies for Unbundled Network Elements that CLEC wishes to order within seven (7) business days, except where Malheur cannot obtain a release from its vendors within seven (7) business days, in which case Malheur will make the data available as soon as Malheur receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Malheur under the non-disclosure sections of this Agreement.

**EXHIBIT G**  
**INTENTIONALLY LEFT BLANK**

**EXHIBIT H**  
**Calculation of the Relative Use Factor (RUF)**

**Minutes that are Malheur's responsibility (A):**

- All EAS/Local 251(b)(5) Minutes of Use (MOU) that Malheur sends to CLEC
- All Malheur Exchange Access MOU that Malheur sends to CLEC
- EAS/Local 251(b)(5) traffic that transits Malheur network and is terminated to CLEC, for which Malheur receives compensation from the originating Carrier for performing the local transiting function
- All IntraLATA transit MOU that Malheur sends to CLEC
- All ISP-bound and FX MOU that CLEC sends to Malheur

**Minutes that are CLEC's responsibility (B):**

- All EAS/Local 251(b)(5) MOU that CLEC sends to Malheur
- All Exchange Access MOU that CLEC sends to Malheur
- All EAS/Local 251(b)(5) traffic that CLEC sends to Malheur for termination on another Carrier's network
- All IntraLATA transit MOU that CLEC sends to Malheur
- All Jointly Provided Switched Access (unless joint NECA 4 billing percentages have been filed) that Malheur sends to CLEC and that CLEC sends to Malheur
- All ISP-bound and VNXX MOU that Malheur sends to CLEC
- All VNXX MOU that transits Malheur network and is terminated to CLEC

**The mathematical equation for RUF is as follows:**

**Malheur (A) / (A+B) Rounded to nearest whole percentage**

**CLEC (B) / (A+B) Rounded to nearest whole percentage**

Data used for the calculation will be the average of the most recent three (3) months' usage determined not to be an anomaly.

## **Exhibit I – Individual Case Basis**

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Malheur.
2. ICB Rate Intervals
  - 2.1 For those products and services identified in the Agreement that contain a provision for ICB rates, Malheur will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the Agreement or this Exhibit.
  - 2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Malheur shall provide CLEC with an ICB quote within the stated specific intervals:
    - 2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.
    - 2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Exhibit F.
    - 2.2.3 Quotes for all collocation requests, regardless of the type of collocation, shall be provided in accord with the Section 8 interval.
    - 2.2.4 Intentionally left Blank
    - 2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.
  - 2.3 Upon request, Malheur shall provide CLEC with Malheur's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Malheur cannot obtain a release from its vendors within seven (7) business days, in which case Malheur will make the data available as soon as Malheur receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Malheur shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Malheur shall request the release of vendor cost information when Malheur communicates with the vendor(s) when Malheur seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Malheur under the non-disclosure sections of this Agreement.

### **Exhibit I – Individual Case Basis**

#### 3. ICB Provisioning Intervals

- 3.1 For those products and services provided pursuant to this Agreement that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.
  
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Malheur representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.

**Exhibit J**  
**Election of Reciprocal Compensation Option**

Pursuant to the election in this Exhibit J of this Agreement, the Parties agree to exchange (§251(b)(5)) Traffic, per section 7.3.4.4 at:

CLEC must select either 1. OR 2.

1. The rates applicable to §251(b)(5) Traffic between Malheur and CLEC shall be the same as the rates established in ISP-bound traffic pursuant to Exhibit A, Section 7.7. Such rate for ISP-bound traffic will apply to §251(b)(5) Traffic in lieu of End Office Call Termination rates, and Tandem Switched Transport rates.

Signature \_\_\_\_\_

2. Compensation rate for §251(b)(5) Traffic shall be as established by the Commission pursuant to Exhibit A, Section 7.6, the rates as appropriate.

Signature \_\_\_\_\_

When the FCC ordered rate for ISP-bound traffic is applied to (§251(b)(5)) Traffic, the FCC Ordered ISP rate is used in lieu of End Office call termination and Tandem Switched Transport rate elements.

## **Exhibit K**

**Intentionally Left Blank**