
CARRIER-TO-CARRIER AGREEMENT CHECKLIST

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 *Requesting Carrier* *Affected 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 (Check all that apply. For example, parties seeking to adopt a previously approved agreement with new negotiated amendments should check both "Adoption" and "Amendment" categories.)

Adoption: Adopts interconnection agreement previously approved by the Commission.

Parties to prior agreement _____ & _____

Approved in Docket ARB _____, Order No(s). _____

- Does filing adopt amendments to base agreement previously approved by the Commission?

NO

YES, approved in Docket ARB _____, Order No(s). _____

New Agreement: Seeks approval of new negotiated agreement.

- Does this filing replace an agreement between the same parties that was previously approved by the Commission?

NO

YES, approved in Docket ARB _____, Order No(s). _____

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

- If the original agreement was negotiated, has it been approved by Commission?

NO, decision pending in Docket ARB _____

YES, approved in Docket ARB _____, Order No(s). _____

- If original agreement was an adoption, what was its docket number? Docket ARB _____

Other: Please explain.

**Amendment to Statement of Generally Available Terms and Conditions
for Interconnection, Unbundled Network Elements, Ancillary Services,
and Resale of Telecommunications Services Provided by Qwest
Corporation in the State of Oregon to the City of Portland, Oregon (City
of Portland Contract Number 51707)**

This is an amendment (“Amendment”) to the Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation (“Qwest”), a Colorado corporation, to City of Portland, Oregon (“City”), an Oregon municipal corporation. Qwest and the City are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the Parties entered into an interconnection agreement for service in the State of Oregon that was approved by the Public Utility Commission of Oregon on February 12, 2002, as referenced in Docket No. ARB 398, Order No. 02-093 (the “Agreement”), which Agreement has a City Contract Number of 51707; and

WHEREAS, the City commenced litigation against Qwest to interpret and enforce the Agreement, and Qwest asserted a counterclaim against the City; and

WHEREAS, the Parties have settled the litigation and, as part of that settlement, have agreed to amend the Agreement (1) to clarify that the City may not use products, services, and facilities purchased under the Agreement to provide telecommunications to the City and (2) to revise the dispute resolution provisions of the Agreement; and

WHEREAS, the parties wish to amend the Agreement under the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. No Self-Use

The Parties intend that the provisions of this section 1 clarify the current meaning of the Agreement, but do not change the meaning of the Agreement.

1.1 The City may not use any product, service, or facility purchased under the Agreement to provide any type of telecommunications to any employee, office, official, bureau, department, agency, commission, council, building, or location of the City, or to any person or entity affiliated with, owned in whole or in part by, or controlled by the City

(hereinafter, "City Telecommunications"). For purposes of this Amendment, a person or entity is not affiliated with, owned in whole or in part by, or controlled by the City if it is a corporate or public body legally distinct from the City and the Portland City Council is neither the person or entity's governing body nor appoints the majority of the person or entity's governing body. This section does not prohibit: (1) the City from using any product, service, or facility purchased under the Agreement to provide telecommunications service to an unaffiliated third party that may happen to be a tenant of a building owned by the City; or (2) an employee of the City from making use of telecommunications service provided by the City to an unaffiliated third-party using products or services under the Agreement, when the City employee is on the premises of the unaffiliated third-party who purchases telecommunications services from the City.

1.2 The prohibition on using any product, service, or facility purchased under the Agreement to provide City Telecommunications includes, but is not limited to, unbundled network elements, telecommunications service sold for resale, transport, trunking, collocation, interconnection, entrance facilities, ancillary services, and OSS.

1.3 The City may not commingle City Telecommunications with telecommunications provided by the City to any unaffiliated third party over products, facilities, or services purchased under the Agreement. In other words, if the City does provide telecommunications to unaffiliated third parties through the use of any product, service, or facility purchased under the Agreement, such as an entrance facility, the City may not use the same product, service, or facility, even in part, to provide City Telecommunications. This section should not be interpreted to prevent the City from completing a telephone call between (a) a City office and (b) an unaffiliated third party to whom the City is providing telecommunications service using products, facilities, or services purchased under the Agreement.

2. Dispute Resolution Provisions

The parties agree to substitute the following provisions for the original Section 5.18 of the Agreement:

5.18 Dispute Resolution

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

injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

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

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

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

5.18.3.3 Arbitrator's Decision

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

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

5.18.3.4 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to

prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide fifteen (15) calendar Days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

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

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

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

3. Effective Date

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

4. Amendments; Waivers

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented without the written consent thereto by both Parties' authorized representatives. Waivers of, consents to, or departures from the provisions of this Amendment 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. **Entire Agreement**

This Amendment constitutes the full and entire understanding and agreement between the parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments or representations by or between the parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below.

CITY OF PORTLAND, OREGON

Vera Katz
Signature

Vera Katz
Name Printed/Typed

MAYOR
Title

7/9/03
Date

APPROVED AS TO FORM

QWEST

By: [Signature]
Alex M. Duarte, OSB No. 02045

QWEST CORPORATION

[Signature]
Signature

LT Christensen
Name Printed/Typed

Director - Business Devel
Title

6/27/03
Date

CITY OF PORTLAND, OFFICE OF CITY ATTORNEY

By: Benjamin Walters
Deputy City Attorney, OSB No. 85354