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Attachment 6
Rights of Way (ROW), Conduits, Pole Attachments

RIGHTS OF WAY (ROW), CONDUITS, POLE ATTACHMENTS

Section 1. Introduction

1.1 This Attachment sets forth the requirements for Rights of Way, Conduits and Pole Attachments and Unused Transmission Media.

Section 2. Definitions

2.1 "Poles, ducts, conduits and ROW" refer to all the physical facilities and legal rights which provide for access to pathways across public and private property. These include poles, pole attachments, ducts, innerducts, conduits, building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets, building risers, rights of way or any other requirements needed to create pathways. These pathways may run over, under, across or through streets, traverse private property or enter multi-unit buildings. A Right of Way ("ROW") is the right to use the land or other property owned, leased or controlled by any means by USWC to place Poles, ducts, conduits and ROW or to provide passage to access such Poles, ducts, conduits and ROW. A ROW may run under, on or above public or private property (including air space above public or private property) and shall include the right to use discrete space in buildings, building complexes or other locations.

Section 3. Requirements

3.1 USWC shall provide MCIm with non-discriminatory access to the poles, ducts, conduits, and rights-of-way USWC owns or controls on terms and conditions comparable to those offered to any other Person.

3.2 USWC shall make Poles, duct, conduits and ROW available to MCIm upon receipt of a request for use within the time periods provided in this Attachment 6, providing all information necessary to implement such use and containing rates, terms and conditions, including, but not limited to, maintenance and use in accordance with this Agreement and at least equal to those which it affords itself, its Affiliates and others. Other users of these facilities, including USWC, shall not interfere with the availability or use of the facilities by MCIm.

3.3 Within five (5)~~three (3)~~ business days of MCIm's request for any Poles, ducts, conduits or ROW, USWC shall provide any information in its possession or available to it regarding the environmental conditions of the Poles, ducts, conduits or ROW route or location including, but not limited to, the existence and condition of asbestos, lead paint, hazardous substance contamination or radon. Information is considered "available" under this Agreement if it is in USWC's possession, or the possession of a current or former agent, contractor, employee, lessor or tenant of USWC. If the Poles, ducts, conduits or ROW contain such environmental contamination, making the placement of equipment hazardous, USWC shall offer alternative Poles, ducts, conduits or ROW for MCIm's consideration. Except for these alternatives, 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. ~~USWC shall complete an Environmental, Health and Safety Questionnaire for each work location MCIm requests or USWC suggests as a site to be covered under this Agreement. USWC shall return the completed questionnaire to MCIm within ten (10) days and shall allow MCIm to perform any environmental site investigations, including, but not limited to, Phase I and Phase II environmental site assessments, as MCIm may deem to be necessary.~~

3.4 USWC shall not prevent or delay any third party assignment of ROW to MCIm.

3.5 USWC shall offer the use of such Poles, ducts, conduits and ROW it has obtained from a third party to MCIm, to the extent the agreement or arrangement for such use does not prohibit USWC from granting such rights to MCIm. They shall be offered to MCIm on the same terms as are offered to USWC. USWC shall exercise its eminent domain authority when necessary to expand an existing ROW over private property in order to accommodate a request from MCIm for access to such ROW. MCIm shall reimburse USWC for USWC's reasonable costs, if any, incurred as a result of the exercise of its eminent domain authority on behalf of MCIm in accordance with the provisions of this Section 3.5.

3.6 USWC shall provide MCIm equal and non-discriminatory access to Poles, ducts, conduit and ROW and any other pathways on terms and conditions equal to that provided by USWC to itself or to any other Person or third party. Further, USWC shall not preclude or delay allocation of these facilities to MCIm because of the potential needs of itself or any other Person or third parties, except a maintenance spare may be retained to the extent provided for in this Attachment.

3.7 USWC shall not attach, or permit other entities to attach facilities on, within or overlashed to existing MCIm facilities without MCIm's prior written consent.

3.8 USWC agrees to produce current detailed engineering and other plant records and drawings of Poles, ducts, conduit and ROW, including facility route maps at a city level, as well as cost data, within a reasonable time frame, which in no case shall exceed five (5)~~two (2)~~ business days following MCIm's request for access to such engineering, cost data and other plant records and drawings of additional Poles, ducts, conduits and ROW in selected areas as specified by MCIm. Such information shall be of equal type and quality as that of USWC's own engineering and operations staff. USWC shall also allow personnel designated by MCIm to examine such engineering records and drawings at USWC Central Offices and USWC Engineering Offices upon two (2) days' notice to USWC.

3.9. USWC shall provide to MCIm a Single Point of Contact for negotiating all structure lease and ROW Agreements.

3.10 USWC shall provide information regarding the availability and condition of Poles, ducts, conduit and ROW within five (5) business days of MCIm' s request if the information then exists in USWC's records (a "records based answer") and ten (10) business days of MCIm's request if USWC must physically examine the Poles, ducts, conduits and ROW (a "field based answer") ("Request"). MCIm shall have the option to be present at the field based survey and USWC shall provide MCIm at least twenty-four (24) hours' notice prior to the start of such field survey. During and after this period, USWC shall allow MCIm personnel to enter manholes and equipment spaces and view pole structures to inspect such structures in order to confirm usability or assess the condition of the structure. USWC shall send MCIm a written notice confirming availability pursuant to the Request within such ten (10) day period ("Confirmation").

3.11 ~~For the period beginning at the time of the Request and ending ninety (90) days following Confirmation, USWC shall reserve such Poles, ducts, conduit and ROW for MCIm, on a non-discriminatory basis, and shall not allow any use thereof by any Person or third party, including USWC. MCIm shall elect whether or not to accept such Poles, ducts, conduit and ROW within such ninety (90) day period.~~ MCIm may accept such facilities by promptly, within five (5) business, sending written notice to USWC ("Acceptance").

3.12 After Acceptance by MCIm, MCIm shall have six (6) months to begin attachment and/or installation of its facilities to the Poles, ducts, conduit and ROW or request USWC to begin make ready or

other construction activities. Any such construction, installation or make ready shall be completed by the end of one (1) year after Acceptance. MCIm shall not be in default of the six (6) month or one (1) year requirement above if such default is caused in any way by any action, inaction or delay on the part of USWC or its Affiliates or subsidiaries. After Acceptance, USWC shall complete any work required to be performed by USWC or any USWC work requested by MCIm within thirty (30) days of such time the work is required or within thirty (30) days of the time such work is requested by MCIm, whichever time is earlier. MCIm shall begin payment for the use of the Poles, ducts, conduit and ROW upon the earlier of: (a) completion of construction and installation of the facilities and confirmation by appropriate testing methods that the facilities are in a condition ready to operate in MCIm's network, or (b) six (6) months after Acceptance.

3.13 USWC shall take all reasonable steps to relocate and/or make ready existing Poles, ducts, conduit and ROW where necessary and feasible to provide space for MCIm's requirements before denying access. The Parties shall endeavor to mutually agree upon the time frame for the completion of such work within five (5) days following MCIm's request for this work, provided, that any such work required to be performed by USWC shall be completed within ninety (90) days or the interval equivalent to that USWC applies to itself, whichever is less~~with thirty (30) days~~, unless otherwise agreed by MCIm in writing.

3.14 MCIm may, at its option, install its facilities on Poles, ducts, conduit and ROW and use MCIm or MCIm designated personnel to attach its equipment to such USWC Poles, ducts, conduits and ROW.

~~3.15 USWC shall provide MCIm space in manholes for racking and storage of cable and other materials as requested by MCIm.~~

3.15 If, at any time, USWC reasonably determines that the equipment or the installation does not meet standard industry requirements, such failure being due to actions of MCIm or its agents, MCIm will be responsible for the costs associated with the removal, modification to or installation of the equipment to bring in into compliance. If MCIm fails to correct any non-compliance within thirty (30) calendar days or as soon as reasonably practical after the receipt of written notice of non-compliance, USWC may have the equipment removed or the condition corrected at MCIm's expense.

3.16 If, during installation, USWC reasonably determines that MCIm activities or equipment are unsafe, non-industry standard or in violation of any applicable laws or regulations, USWC has the right to stop work until the situation is remedied. If such conditions pose an immediate threat to the safety of personnel, interfere with the performance of USWC's service obligations or pose an immediate threat to the physical integrity of the conduit system or the cable facilities, USWC may perform such work and/or take action as is necessary to correct the condition at MCIm's expense.

3.17~~16~~ USWC shall make available any conduit system with any retired cable from conduit systems or poles to allow for the efficient use of conduit space and pole space. USWC must take all reasonable steps to expand its facilities, including placement of taller poles or additional conduits, if necessary, to accommodate MCIm's request and shall do so within a reasonable period of time.

3.18~~17~~ Where USWC has spare innerducts which are not, at that time, being used for providing its services, USWC shall offer such ducts for MCIm's use.

3.19~~18~~ USWC may not reserve capacity on its poles, ducts, conduits or ROW, but may consider safety and reliability in determining whether it has capacity available for MCIm's use. In a dispute over the availability of capacity, USWC shall have the burden of proving that any spare capacity is reserved solely to meet USWC's legitimate safety and reliability needs.

3.2019 Where a spare innerduct does not exist, USWC shall allow MCIm to install an innerduct in USWC conduit.

3.2120 Where USWC has any ownership or other rights to ROW to buildings or building complexes, or within buildings or building complexes, USWC shall offer to MCIm:

3.2120.1 The right to use any spare metallic and fiber optic cabling within the building or building complex;

3.2120.2 The right to use any spare metallic and fiber optic cable from the property boundary into the building or building complex;

3.2120.3 The right to use any available space owned or controlled by USWC in the building or building complex to install MCIm equipment and facilities;

3.2120.4 Ingress and egress to such space; and

3.2120.5 The right to use electrical power at parity with USWC's rights to such power.

3.2221 Whenever USWC intends to modify or alter any Poles, ducts, conduits or ROW which contains MCIm's facilities, USWC shall provide written notification of such action to MCIm so that MCIm may have a reasonable opportunity to add to or modify MCIm's facilities. If MCIm adds to or modifies MCIm's facilities according to this Section, MCIm shall bear a proportionate share of the costs incurred by USWC in making such facilities accessible.

3.2322 MCIm shall not be required to bear any of the costs of rearranging or replacing its facilities, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any Person or third party other than MCIm, including USWC. MCIm shall only be responsible for costs arising from the modification of an ROW, conduit or pole attachment if MCIm requests the modification or if MCIm uses the modification to improve its preexisting attachments. Where MCIm is responsible for modification costs, it shall not be responsible for more than its proportionate share of the total modification costs, and USWC shall require any Person or third party that subsequently takes advantage of the modification (including USWC) to proportionately reimburse MCIm based on MCIm's share of the modification costs. Modification costs shall be allocated according to the ratio of the amount of new space a party occupies to the total amount of new space occupied by all parties (including USWC) that take advantage of the modification, although a late-entering occupant's share shall be reduced to take into account any depreciation in the facility.

3.2423 USWC shall maintain the Poles, ducts, conduits and ROW at its sole cost. MCIm shall maintain its own facilities installed on or within the Poles, ducts, conduits and ROW at its sole cost. In the event of an emergency, USWC shall begin repair of its facilities containing MCIm's facilities within two (2) hours of notification by MCIm. If USWC cannot begin repair within such 2-hour period, MCIm may begin such repairs without the presence of USWC personnel. MCIm may climb poles and enter the manholes, handholds, conduits and equipment spaces containing USWC's facilities in order to perform such emergency repair or maintenance, but only until such time as qualified personnel of USWC arrives ready to continue such repairs. For both emergency and non-emergency repairs, MCIm may use spare innerduct or conduits, including the innerduct or conduit designated by USWC as emergency spare for maintenance

purposes; however, MCIm may only use such spare conduit or innerduct for a maximum period of ninety (90) days.

3.2524 In the event of a relocation necessitated by a governmental entity exercising the power of eminent domain, when such relocation is not reimbursable, the costs of relocation of the Poles, ducts, conduits and ROW shall be shared as follows: base conduits or poles shall be shared on a pro rata basis by all parties occupying the affected ROW, and each party shall pay its own cost of cable and installation.

Section 4. Unused Transmission Media

4.1 Definitions:

~~4.1.1 Unused Transmission Media is physical inter-office transmission media (e.g., optical fiber, copper twisted pairs, coaxial cable) which have no lightwave or electronic transmission equipment terminated to such media to operationalize transmission capabilities.~~

4.1.12 Dark Fiber is excess fiber optic cable which has been placed in a network and is not currently being lit by electronics from any carrier. Dark Fiber, which is defined as Unused Transmission Media for the purposes of this Agreement~~one type of Unused Transmission Media~~, is unused strands of optical fiber. Dark Fiber also includes strands of optical fiber which may or may not have lightwave repeater (regenerator or optical amplifier) equipment interspliced, but which has no line terminating facilities terminated to such strands. Unused Transmission Media also includes unused wavelengths within a fiber strand for purposes of coarse or dense wavelength division multiplexed (WDM) applications. Typical single wavelength transmission involves propagation of optical signals at single wavelengths (1.3 or 1.55 micron wavelengths). In WDM applications, a WDM device is used to combine optical signals at different wavelengths on to a single fiber strand. The combined signal is then transported over the fiber strand. For coarse WDM applications, one signal each at 1.3 micron and 1.55 micron wavelength are combined. For dense WDM applications, many signals in the vicinity of 1.3 micron wavelength and/or 1.55 micron wavelength are combined.

4.2 Requirements

4.2.1 Pursuant to the BFR process described in this Agreement, or until such time as dark fiber is required to be offered as an Unbundled Network Element, in those instances where excess reserve of fiber capacity exists, USWC shall make available Unused Transmission Media in Colorado to MCIm under a lease agreement or other arrangement provided, however, that in the event that MCIm has excess reserve, if any, of Unused Transmission Media it shall make such excess reserves available to USWC on the conditions included in this Section and in previously referenced BFR process. However, MCIm is not required to make available any Unused Transmission Media until it first receives access to such media under the provisions of this Section.

4.2.2 The Parties~~USWC~~ shall provide a Single Point of Contact (SPOC) for negotiating all Unused Transmission Media use arrangements.

4.2.3 The Parties~~MCIm~~ may test the quality of the Unused Transmission Media to confirm its usability and performance specifications.

4.2.4 Where Unused Transmission Media is required to be offered or is agreed to be offered by a Party~~USWC~~, that Party~~USWC~~ shall provide to the other Party~~MCIm~~ information regarding the location, availability and performance of Unused Transmission Media within five (5) business days for a

records based answer and twenty (20) calendar days for a field based answer, after receiving a request from a Party~~MCIm~~ ("Request"). Within such time period, the receiving Party~~USWC~~ shall send written or electronic confirmation or any other method of notification agreed to by the Parties of availability of the Unused Transmission Media ("Confirmation"). ~~From the time of the Request to ninety (90) days after Confirmation, USWC shall reserve such requested Unused Transmission Media for MCIm's use and may not allow any other Party to use such media, including USWC.~~

4.2.5 Where Unused Transmission Media is required to be offered or is agreed to be offered by a Party~~USWC~~, that Party~~USWC~~ shall make Unused Transmission Media available for the other Party's~~MCIm's~~ use in accordance with the terms of this Section 4 within twenty (20) business days after it receives written acceptance from the requesting Party~~MCIm~~ that the Unused Transmission Media is wanted for use by that Party~~MCIm~~. This includes identification of appropriate connection points (*e.g.*, Light Guide Interconnection (LGX) ~~or splice points~~) to enable the requesting Party~~MCIm~~ to connect its ~~or splice MCIm~~ provided transmission media (*e.g.*, optical fiber) or equipment to the Unused Transmission Media.

4.4 Requirements Specific to Dark Fiber

4.4.1 A Party~~MCIm~~ may ~~splice and~~ test Dark Fiber leased from the other Party~~USWC~~ using its~~MCIm or MCIm~~ designated personnel. Parties~~USWC~~ shall provide appropriate interfaces to allow testing of Dark Fiber. Parties~~USWC~~ shall provide an excess cable length of twenty- five (25) feet minimum, where available, for fiber in underground conduit.

4.4.2 For WDM applications, a Party~~USWC~~ shall provide ~~to MCIm~~ an interface to an existing WDM device or allow the requesting Party~~MCIm~~ to install its own WDM device (where sufficient system loss margins exist or where MCIm provides the necessary loss compensation) to multiplex the traffic at different wavelengths. This applies to both the transmit and receive ends of the Dark Fiber.

4.4.2 USWC may not reserve future capacity of its Dark Fiber for its own use if conduit or innerduct is unavailable on the same route.

~~4.4.3 Portions of the bandwidth of the fiber may be sectioned and MCIm may share the bandwidth with USWC and other CLECs.~~

4.4.4 A Party~~USWC~~ may revoke the lease or other use arrangement and reclaim its fiber or bandwidth with twelve (12) months notice to the other Party~~MCIm~~, if it~~USWC~~ can establish that the fiber is necessary to meet its bandwidth requirements or those of another requesting CLEC. ~~, provided that MCIm's transportation is provided for by alternative means and at comparable prices and quality. The conversion to the alternative means shall be at the expense of the new user of the Dark Fiber, whether that be USWC or another CLEC.~~ An alternative to revoking the lease~~One of the alternatives means~~ to be considered by the Party owning the fiber~~USWC~~ will be the sharing of bandwidth.