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UTILITIES COMMISSION

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July 7, 2003

**VIA HAND DELIVERY**

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

Re: Case No. ONE-T-03-19  
**APPLICATION FOR APPROVAL OF AMENDMENT TO THE  
INTERCONNECTION AGREEMENT**

Dear Ms. Jewell:

Enclosed for filing with this Commission on behalf of Qwest Corporation and LSSi Corp. is an original of the **Application for Approval of Amendment to the Interconnection Agreement**. The parties respectfully request that this matter be placed on the Commission Decision Meeting Agenda for expedited approval.

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

Very truly yours,

  
Mary S. Hobson

:blg  
Enclosure

Mary S. Hobson (ISB# 2142)  
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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

JOINT APPLICATION OF QWEST  
CORPORATION AND LSSI CORP. FOR  
APPROVAL OF AN AMENDMENT TO THE  
INTERCONNECTION AGREEMENT  
PURSUANT TO 47 U.S.C. §252(e)

CASE NO.: QWEST-03-19  
**APPLICATION FOR APPROVAL OF  
AMENDMENT TO THE  
INTERCONNECTION AGREEMENT**

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest hereby submits the enclosed negotiated Amendment Number One to the Agreement for Directory Assistance List Information between Qwest Corporation (“Qwest”) and LSSI Corp. Qwest is also submitting the underlying agreement between the parties for the Commission’s review and approval.

Qwest is filing this amendment and the underlying agreement out of an abundance of caution to make certain that there are no questions regarding compliance with any filing obligations. Indeed, this may be an instance of over-filing.

The underlying agreement, the Agreement for Directory Assistance List Information, dated July 28, 1998, states that U S WEST, now Qwest, would provide to LSSI (1) end user name, (2) end user address, and (3) end user published or nonlisted telephone number, or an indication of nonpublished status (“DA List Information”). LSSI uses the DA List Information to provide directory assistance services on behalf of, or as an agent of, a carrier. The Amendment dated August 12, 2002, amends the underlying agreement on the permitted and restricted uses of DA List information, such that LSSI can use the information for the purposes of directory assistance services and directory publishing.

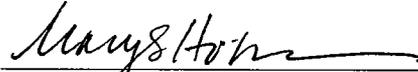
There are several reasons that this agreement may not be within the filing requirement of Section 252. First, LSSi has not received certification as a local or toll carrier, or under any other category of certification in this state. And there is no underlying interconnection agreement between LSSi and Qwest. Further, these types of agreements may not be within the types of services that are subject to the filing requirement. The FCC in its October 4, 2002 Order, listed the following as services subject to 252: “resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation.”<sup>1</sup> Also, the FCC stated in its order granting Qwest 271 relief in its nine-state application that a DA agreement for the purposes of filing issues was “not 251-related.”<sup>2</sup>

However, as Qwest has stated before, it is employing a broad standard to ensure compliance with Section 252, and thus is filing this amendment and its underlying agreement for review and approval under Section 252(e).

The enclosed amendment does not discriminate against non-party carriers. It is consistent with the public interest, convenience, and necessity. It is also consistent with applicable state law requirements, including Commission orders regarding interconnection issues.

Respectfully submitted this 7<sup>th</sup> day of July, 2003.

**Qwest Corporation**



Mary S. Hobson  
Stoel Rives LLP, Attorneys for Qwest

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<sup>1</sup> *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Rel. October 4, 2002, para. 8

<sup>2</sup> *In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-314, Rel. December 23, 2002, at footnote 1746.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of July, 2003, I served the foregoing **APPLICATION FOR APPROVAL OF AMENDMENT TO THE INTERCONNECTION AGREEMENT** upon all parties of record in this matter as follows:

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83720-0074  
jjewell@puc.state.id.us

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



\_\_\_\_\_  
Brandi L. Gearhart, PLS  
Legal Secretary to Mary S. Hobson  
Stoel Rives LLP

AMENDMENT NUMBER ONE TO THE  
AGREEMENT FOR DIRECTORY ASSISTANCE  
LIST INFORMATION BETWEEN  
QWEST CORPORATION  
AND LSSI CORP.  
DATED AUGUST 12, 2002

THIS AMENDMENT is made by and between Qwest Corporation ("Qwest"), a Colorado corporation, and LSSI Corp. ("LSSI"), a Delaware corporation, (collectively, the "Parties") as of the \_\_\_ day of September, 2002.

WHEREAS, the Parties executed an Agreement for Directory Assistance List Information on July 28, 1998 (the "Agreement"); and

WHEREAS, the Parties desire to amend the Agreement to set forth terms and conditions under which LSSI may use and license for use DA List Information for purposes of directory publishing:

NOW THEREFORE, for and in consideration of the promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Amendment, intending to be legally bound, agree to amend the Agreement as follows:

1. Section 3 of the Agreement is modified to read as follows:

**3. GRANT OF LICENSE AND RESTRICTIONS ON USE OF DA LIST INFORMATION**

3.1 Qwest grants to LSSI access to the DA List Information for purposes of providing Directory Assistance Service, and for other lawful purposes, except that listings included in Qwest's DA List Information and marked as nonpublished or nonlisted listings, or listings marked with an "omit from lists" indicator shall not be used for marketing purposes, subject to the terms and conditions of this Agreement. As it pertains to the DA List Information in this Agreement, "Directory Assistance Service" shall mean the provision by LSSI via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number.

3.2 LSSI shall not copy or disclose the DA List Information in its entirety or any portion thereof and resell it to any directory assistance provider for the purpose of providing directory assistance services. LSSI shall be permitted to copy, disclose and/or resell the DA List Information, or any portion thereof, for purposes of directory publishing; provided however, that LSSI shall not include nonpublished or nonlisted listings or listings marked with an "omit from lists" indicator in the DA List Information provided to publishers. LSSI shall include in the sublicense agreement, at a minimum, a use restriction limited to directory publishing, a requirement that the publisher include all privacy indicators in any published directories, the provisions contained in sections 3.3 and 3.4 of this Agreement (with the inclusion of Qwest as third party beneficiary), other relevant provisions from the Agreement, and the following:

Publisher shall not sublicense, copy or allow any third party, with the exception of end

users and corporate affiliates for purposes associated with the use of directories and for publishing directories, to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of the DA List 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 DA List Information when contained in any database.

Qwest shall have the right to review LSSi's form sublicense agreement and LSSi shall not make changes to that form which will materially affect Qwest's rights under the Agreement.

Qwest and LSSi shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of DA List 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 DA List Information when contained in any database. LSSi shall remove from its database any telephone number for an end user whose listing has become non-published when so notified by Qwest.

3.2.1 Pursuant to section 2.3 of the Agreement, LSSi recognizes that LECs and CMRS providers who have provided DA List Information that is included in Qwest'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 DA List Information. Qwest shall notify LSSi of any agreement with a LEC or CMRS provider that prohibits use of DA List Information for other than the provision of Directory Assistance Services. LSSi shall either (1) exclude such carrier's DA List Information from the data licensed to directory publishers hereunder or, (2) after notification by Qwest, LSSi shall obtain a Letter of Authorization from each such carrier in the form attached to the Agreement as Exhibit D.

LSSi will indemnify Qwest pursuant to section 8 of this Agreement, 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. LSSi further acknowledges that Qwest has offered their subscriber lists information to LSSi for the purpose of publishing directories and that the Qwest directory publisher has obtained consent from these carriers to include their listings in this information.

3.3 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.

Qwest shall retain all right, title, interest and ownership in and to the DA List Information it provides hereunder. LSSi acknowledges and understands that while it may disclose the DA List Information to a third party calling its DA service for such information, the fact that such end user subscribes to Qwest's, CMRS's or LEC's telecommunications services is confidential and proprietary information and shall not be disclosed to any third party. Any disclosure of the fact

that an end user subscribes to Qwest's, CMRS's or LEC's telecommunications services or unauthorized use of DA List Information shall be considered a material breach of this Agreement and provisions of 4.1(b) shall apply.

3.4 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. Notwithstanding the above, LSSi may respond to specific requests from its carrier customers regarding the source of particular DA listings.

3.5 Within five (5) days after the expiration or earlier termination of this Agreement, LSSi shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List 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 Qwest from LSSi's officer that all of the foregoing actions have been completed. Notwithstanding the foregoing, LSSi shall not be required to return, cease the use of, extract, expunge, or certify the return of DA List Information which LSSi has properly sublicensed to directory publishers under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives on the date indicated below.

LSSi Corp.

By: E.P. Tierney

Name: E.P. TIERNEY

Title: VICE PRESIDENT

Date: 9-16-02

Qwest Corporation

By: Ferry W. Hooks Jr.

Name: Ferry W. Hooks Jr.

Title: Director - Switched Access,  
Information & Billing Services

Date: October 16, 2002

## Janet Bahora

---

**From:** Hobson, Mary [MSHOBSON@stoel.com]  
**Sent:** Tuesday, July 08, 2003 10:54 AM  
**To:** Janet Bahora  
**Cc:** Gearhart, Brandi  
**Subject:** LSSi flimg

Your email to Brandi was forwarded to me for response. There is no "interconnection agreement" per se--but the underlying agreement that is being amended was appended to the application for the Commission's convenience. The difficulty here is that Qwest does not believe this amendment needs to be filed and approved by the Commission but is doing so out of an abundance of caution. We request, therefore that the Commission give the filing a new number and approve the amendment as set out in the Application. If you have other questions, please let me know. Thanks.

A handwritten signature in black ink, appearing to read "John C. Cusack". The signature is written in a cursive style and is positioned to the right of the main text block.

**AGREEMENT  
FOR  
DIRECTORY ASSISTANCE LIST INFORMATION**

This Agreement ("Agreement") effective as of the 28TH day of JULY, 1998 (the "Effective Date"), is made and entered into by Listing Services Solutions, Inc. ("LSSI"), a DELAWARE corporation, and U S WEST Communications, Inc. ("U S WEST"), a Colorado corporation (the "Parties"), to establish the terms and conditions under which U S WEST will provide Directory Assistance List Information to LSSI.

**PREAMBLE**

WHEREAS, U S WEST owns and maintains a database of its telephone end users with the following: (1) end user name (2) end user address (3) end user published or nonlisted telephone number, or an indication of nonpublished status ("DA List Information").

WHEREAS, U S WEST uses the DA List Information in its databases to provide directory assistance ("DA") service to individuals who call U S WEST's DA service to obtain such information;

WHEREAS, U S WEST provides DA service under contract for other local exchange carriers, co-providers, resellers ("LECs"), or commercial mobile radio service providers ("CMRS"), and U S WEST's DA List Information also contains LEC and a limited number of CMRS end users; and

WHEREAS, LSSI wishes to provide DA service to its customers, and, therefore, wishes to include the DA List Information in its DA databases;

NOW THEREFORE, in consideration of these promises and the terms and conditions contained herein, the parties agree as follows:

**1. SCOPE OF AGREEMENT**

1.1 This Agreement shall govern U S WEST's provision of DA List Information to LSSI within its local exchange service area in its fourteen state operating territory.

1.2 LSSI represents, in the states in which it will obtain DA List Information, that it is a telecommunications carrier as defined in Section 3(44) of the Telecommunications Act of 1996 or a competing provider of telephone exchange service or telephone toll service under Section 251(b)(3) of the Act or that it is an agent for a telecommunications carrier or a competing provider of telephone exchange service or telephone toll service to provide DA services on behalf of that carrier as evidenced by a Letter of Agency which conforms to the requirements set forth on Exhibit B attached

hereto. LSSI will provide the Letter of Agency concurrent with the execution of this Agreement. LSSI will give U S WEST fourteen (14) days notice prior to the termination of the referenced Letter of Agency. This Agreement will terminate concurrently with the referenced Letter of Agency unless LSSI has other such Letter of Agency(s) that are still in effect which have been provided to U S WEST.

## 2. SERVICE

2.1 U S WEST will provide initial loads and daily updates of the DA List Information either by means of a magnetic tape or Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. U S WEST will provide all changes, additions or deletions to the DA List Information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

2.2 DA List Information consists of U S WEST and, where available, other CMRS's and LEC's end user name, address, published or nonlisted telephone number or an indication of nonpublished status, along with other related elements required in the provision of DA service. In the case of end users who have nonpublished listings, U S WEST shall provide the end user's local numbering plan area ("NPA"), address, and an indicator to identify the nonpublished status of the listing to LSSI; however, the nonpublished telephone number shall not be provided.

2.3 Some CMRSs or LECs allow U S WEST to supply their listings to LSSI without the CMRS's or LEC's prior approval. Other CMRSs or LECs require LSSI to negotiate separate agreements with the CMRS or LEC. In the latter event, LSSI must provide U S WEST with the CMRS's or LEC's signed letter of authorization which conforms to the requirements set forth on Exhibit D attached hereto, before U S WEST can release the CMRS's or LEC's listings. USWC will use reasonable efforts to initially identify to LSSI the CMRSs or LECs that require prior authorization. LSSI will give U S WEST fourteen (14) days notice prior to the termination of the referenced Agreement. Upon the effective date of such termination, U S WEST will no longer supply LSSI with that CMRS's or LEC's DA List Information. LSSI's use of CMRS's or LEC's DA List Information shall be in accordance with the terms and conditions of the separate agreement between LSSI and that CMRS or LEC.

2.4 LSSI may order the initial DA List Information load or update files for U S WEST's local exchange service areas in its 14 state operating territory and, where mutually agreed upon, LSSI may order by U S WEST White Page Directory Code or NPA. Special requests for data at the NPA level must be separately negotiated and LSSI shall use the Order Form attached hereto as Exhibit C.

2.5 DA List Information shall specify whether the end user is a residential, business, or government end user.

2.6 In the event LSSI requires a reload of DA List Information from U S WEST's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the Price Schedule in Exhibit A attached hereto.

2.7 LSSI will provide U S WEST the location to which the data will be provided.

### 3. GRANT OF LICENSE AND RESTRICTIONS ON USE OF DA LIST INFORMATION

3.1 During the term of this Agreement, U S WEST grants to LSSI a non-exclusive, non-transferable, revocable license to use the DA List Information solely for the purpose of providing DA service subject to the terms and conditions of this Agreement. For all purposes in this Agreement, "DA service" shall mean the provision via either a live operator or a mechanized voice of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number.

3.2 LSSI shall not use the DA List Information provided hereunder for any other purpose whatsoever. By way of example and not limitation, the DA List Information shall not be used by LSSI for soliciting end users, telemarketing, creating or distributing marketing lists or other compilations of marketing information, publishing any form of directory in any media whatsoever, or providing any internet, on-line or other electronic DA service.

3.3 U S WEST shall retain all right, title, interest and ownership in and to the DA List Information it provides hereunder. LSSI acknowledges and understands that while it may disclose the DA List Information to a third party calling its DA service for such information, the fact that such end user subscribes to U S WEST's, CMRS's or LEC's telecommunications services is confidential and proprietary information and shall not be disclosed to any third party.

3.4 LSSI shall not sublicense, copy or allow any third party to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of DA List 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 DA List Information when contained in any database.

3.5 Any disclosure of the fact that an end user subscribes to U S WEST's, CMRS's or LEC's telecommunications services or unauthorized use of DA List Information shall be considered a material breach of this Agreement and provisions of 4.1(b) shall apply.

3.6 Within five (5) days after the expiration or earlier termination of this Agreement, LSSI shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List Information, any portions thereof, and any and all information extracted therefrom, its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to U S WEST from LSSI's officer that all of the foregoing actions have been completed.

3.7 LSSI is responsible for ensuring that it has proper security measures in place to protect the privacy of the end user information contained within the DA List Information. LSSI must remove from its database any telephone number for an end user whose listing has become non-published when so notified by U S WEST.

#### 4. DEFAULT

4.1 In the event of a breach of any provision of this Agreement, fraud, misrepresentation, willful misconduct or unlawful conduct by either Party, the non-breaching Party shall give the breaching Party written notice thereof, and:

(a) In the case of non-payment of amounts due under this Agreement, the breaching Party shall cure such breach within ten (10) calendar days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision.

(b) In the event of any failure to perform or observe any covenant in Section 3 herein, or in the case of fraud, misrepresentation, willful misconduct, or unlawful conduct, the non-breaching Party shall give notice of such breach and the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within ten (10) calendar days. If the breaching Party does not cure such breach within the applicable time period, the non-breaching Party may, at its sole option, terminate this Agreement, or any parts hereof. In addition, the non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach, including, but not limited to obtaining immediate injunctive relief with respect to any unauthorized use or disclosure of its DA List Information. Furthermore, each party recognizes that the rates agreed upon herein for the DA List Information are based upon the limited use and limited licenses granted under Section 3 herein, entitled "Grant of License and Restrictions on Use of DA List Information." Therefore, each party agrees that any disclosure and/or use of any DA List Information in violation of Section 3 creates a risk of irreparable harm for which monetary damages are not sufficient. Notwithstanding such agreement as to irreparable harm, in the event of any disclosure or use of any DA List Information in violation of Section 3 of the Agreement, U S WEST shall be entitled to damages from the breaching party in an amount equal to the highest rate that U S WEST charges its customers for a full non-restricted license to

use all of the DA List Information provided to LSSI, as that rate is set at the time of the breach, but calculated from the effective date of this Agreement, less any sums previously paid pursuant to this Agreement. Such damages shall be immediately due and payable at the time the unauthorized disclosure or use of DA List Information occurs. Since the damages sustained by either party hereunder would be difficult if not impossible to determine, the parties agree that these damages shall apply as liquidated damages and not as a penalty

(c) in the case of any other failure to perform in accordance with this Agreement, the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within thirty (30) calendar days, and if it does not, the non-breaching Party may, at its sole option, terminate this Agreement. In addition, the non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

## 5. PAYMENTS AND BILLING PROCEDURES

5.1 LSSI shall pay U S WEST for the DA List Information and services provided under this Agreement as specified in Exhibit A or any applicable tariff. Each addition, deletion, or change to the DA List Information constitutes an "update listing".

(a) LSSI shall pay all federal state or local sales, use, excise, gross receipts or other taxes or tax like fees imposed on or charged upon the sums payable hereunder.

(b) If reasonably required to ensure receipt of payments due hereunder, U S WEST reserves the right to require an advance payment for the license to use DA List Information hereunder. If an advance payment is required, U S WEST will notify LSSI upon receipt of the Order.

5.2 The charges listed in Exhibit A shall be subject to adjustment upon sixty (60) days prior written notice.

5.3 Amounts payable under this Agreement, unless reasonably disputed, are due and payable within thirty (30) days after the date of U S WEST's invoice or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a business day, the payment shall be made the next business day.

5.4 Should LSSI dispute any portion of the statement under this Agreement, LSSI will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. LSSI shall pay all amounts due. Both LSSI and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

5.5 A late payment charge of 1.5% applies to all billed balances, not reasonably disputed, which are not paid within the applicable time period set forth in Section 5.3 above. To the extent LSSI pays the billed balance on time, but the amount of the billed balance is reasonably disputed by LSSI, and, it is later determined that a refund is due LSSI, interest shall be payable on the refunded amount in the amount of 1.5% per month. To the extent LSSI pays the billed balance on time, but the amount of the billed balance is reasonably disputed by LSSI, and, it is later determined that no refund is due to LSSI, no interest shall be payable on the disputed amount.

5.6 Late payment charges shall not be used as a "credit" to a deposit, if any, without the express approval of U S WEST.

## 6. TERM OF THE AGREEMENT

6.1 The term of this Agreement (the "Term") shall be for a period of two (2) years beginning on the Effective Date. If USWC continues to provide and LSSI continues to purchase service upon the expiration of this Agreement, such activity will be governed by the terms of this Agreement at U S WEST's then-current rates, and either Party shall have the ability to terminate this Agreement, in whole or in part, on 30 days notice.

## 7. REPRESENTATIONS AND DISCLAIMER OF WARRANTIES

7.1 U S WEST agrees that it will make commercially reasonable efforts to ensure that the DA List Information that it provides to LSSI hereunder will be generally complete and accurate. LSSI may, at its option, require U S WEST to correct any deficiencies in its work product or services within a mutually agreeable time period, at no cost to LSSI.

7.2 Each Party shall conduct all activities and interfaces which are provided for under this Agreement with the other Party's customers in a nondiscriminatory manner.

7.3 LSSI agrees that it shall not disclose Non-published or Non-listed information provided hereunder and shall use such information for the purposes of and only in the performance of this Agreement. LSSI shall not disclose any such information or any part thereof except to the extent expressly permitted by this Agreement or by the owner of the information.

7.4 NOTWITHSTANDING THE FOREGOING, ALL DA LIST INFORMATION IS PROVIDED "AS IS". U S WEST DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE DA LIST INFORMATION THAT IT PROVIDES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES REGARDING ACCURACY, USEFULNESS OR COMPLETENESS, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS

FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE.

## 8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 Notwithstanding any limitations in remedies contained in this Agreement, each Party (the "Indemnifying Party") will indemnify and hold the other Party, its parents, subsidiaries and affiliates and their respective officers, directors, and employees, ("Indemnified Party") harmless from and against any loss, cost, claim, liability, damage and expense, including reasonable attorney's fees, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, actual or alleged infringement or other violation or breach of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right presently existing or later created, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement, or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party.

8.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any written claim, lawsuit, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 8 and tender the defense of such claim, lawsuit or demand to the Indemnifying Party. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

8.3 The Indemnified Party also will cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, including in-house counsel, at its expense, and participate in but not direct the defense; provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.

8.4 The Indemnifying Party will not be liable under this Section 8 for settlements or compromises by the Indemnified Party of any claim, demand or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to timely undertake the defense. 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.

8.5 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit an Indemnifying Party's obligation to indemnify, defend and hold the Indemnified Party harmless against any amounts payable to a third party, including any losses, costs, fines penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (i) willful or intentional misconduct (including gross negligence); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by such Party's negligent act or omission or that of their respective agents, subcontractors or employees, nor shall anything contained in this section limit the Parties indemnification obligations, as specified above.

## 9. AUDIT RIGHTS

9.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DA List 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 12-month period commencing with the Effective Date of this Agreement. U S WEST shall be entitled to "seed" or specially code some or all of the DA List 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 Section 3 above.

9.2 Upon thirty (30) days written notice by the Requesting Party to the other Party (the "Audited Party"), the Requesting Party shall have the right, through its authorized representative, to make an Audit, during normal business hours, of any records (both paper and electronic), accounts and processes which contain information related to this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit, the records, accounts and processes to be reviewed, and the time, place and manner in which the Audit shall be performed. The Audited Party agrees to provide Audit support, including appropriate access to and use of the Audited Party's facilities (e.g., conference rooms, telephones, copying machines).

9.3 Each Party shall bear its own expenses in connection with the conduct of the Audit. The reasonable cost of special data extractions required by the Requesting Party to conduct the Audit will be paid for by the Requesting Party. For purposes of this Section 9.3, a "Special Data Extraction" shall mean 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 specifications and at

the Requesting Party's expense, the Requesting Party shall specify at the time of request whether the program is to be retained by the Audited Party for reuse for any subsequent Audit. Notwithstanding the foregoing, the Audited Party shall pay all of the Requesting Party's "out of pocket" expenses (including, without limitation, the fees of any independent auditor), in the event an Audit discloses unauthorized use of any DA List Information or results in an adjustment in the charges or in any invoice paid or payable by the Requesting Party hereunder in an amount that is, on an annualized basis, more than the greater of (a) one percent (1%) of the amount in dispute, or (b) \$10,000.

9.4 In addition to, and not in lieu of, any and all other remedies available, adjustments, credits or payments shall be made and any corrective action shall commence within thirty (30) days from the Audited Party's receipt of the final audit report to compensate for any violations, errors or omissions which are disclosed by such Audit and are agreed to by the Parties. The highest interest rate allowable by law for commercial transactions shall be assessed and shall be computed by compounding daily from the time of the original due date of the amount of dispute.

9.5 Neither such right to examine and audit nor the right to receive an adjustment shall be affected by any statement to the contrary appearing on checks or otherwise.

9.6 This Section 9 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

9.7 All transactions under this Agreement which are over thirty six (36) months old are no longer subject to Audit.

9.8 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. The Audited 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 Audited Party. To the extent an Audit involves access to information of third parties, the Audited Party will aggregate such competitors' data before release to the Requesting Party to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Audited Party (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliate's desegregated data, as required by the reasonable needs of the Audit.

## 10. CONFIDENTIALITY AND NON-DISCLOSURE

10.1 All information, including, but not limited to, specifications, microfilm, photocopies, magnetic disks, magnetic tapes, models, samples, technical information, data, employee records, financial reports, and market data, (a) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of DA database inclusion subject to the provisions of Section 3 hereof, or (b) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (c) declared orally or in writing to the recipient at the time of delivery, or by written notice given to the recipient within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the discloser. 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.

10.2 Upon request by the discloser, the recipient shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the recipient's legal counsel may retain one (1) copy for archival purposes.

10.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. 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.

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

- (a) was, at the time of receipt, already known to the recipient free of any obligation to keep it confidential as evidenced by written records prepared prior to delivery by the discloser; or
- (b) is or becomes publicly known through no wrongful act of the recipient; or
- (c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the discloser with respect to such information; or
- (d) is independently developed by an employee, agent, or contractor of the recipient, which individual is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

(e) is approved for release by written authorization of the discloser, or

(f) is required by law, a court, or governmental agency, provided that the discloser has been notified of the requirement promptly after the recipient becomes aware of the requirement, subject to the right of the discloser to seek a protective order as provided in Section-10.5 below.

10.5 For a period of three (3) years from receipt of Proprietary Information, the recipient shall (a) use it only for the purpose of performing under this Agreement, (b) hold it in confidence and disclose it only to employees, authorized contractors and authorized agents who have a need to know it in order to perform under this Agreement, and (c) safeguard it from unauthorized use or disclosure using no less than the degree of care with which the recipient safeguards its own Proprietary Information. Any authorized contractor or agent to whom Proprietary Information is provided must have executed a written Agreement comparable in scope to the terms of this Section. Each Party shall provide advance notice of three (3) business days to the other of the intent to provide Proprietary Information to a governmental authority and the Parties shall cooperate with each other in attempting to obtain a suitable protective order. The recipient agrees to comply with any protective order that covers the Proprietary Information to be disclosed.

10.6 Each Party agrees that the discloser would be irreparably injured by a breach of this Section 10 by the recipient or its representatives and that the discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Section 10. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

10.7 Customer Premise Network Information ("CPNI") related to either Party's end users obtained as a result of performance under this Agreement is such Party's Proprietary Information and may not be used by the recipient for any purpose except performance of its obligations under this Agreement, and in connection with such performance, shall be disclosed only to employees, authorized contractors and authorized agents with a need to know, unless the end user expressly directs such Party to disclose such information to the recipient pursuant to the requirements of Section 222(c)(2) of the Act. If the recipient seeks and obtains written approval to use or disclose such CPNI from the discloser, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the recipient may use or disclose only such information as the discloser provides pursuant to such authorization and may not use information the recipient has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

10.8 Except as otherwise expressly provided in this Section 10, nothing herein shall be construed as limiting the rights of either Party with respect to its end user

information under any applicable law, including, without limitation, Section 222 of the Act. They are already covered under the Act. Why do we care if this is in here?

10.9 Effective Date Of This Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all Proprietary Information furnished by either Party with a claim of confidentiality or proprietary nature at any time.

## 11. PUBLIC ANNOUNCEMENTS/PRESS RELEASES

11.1 Each party shall be entitled to issue such press releases and make such public disclosures as it deems appropriate concerning the execution and general terms and conditions of this Agreement however, neither Party shall provide a copy of this Agreement to any third party without the prior written approval of the other Party, except as may be required by any applicable law, regulation, court order or public utilities commission orders.

## 12. NOTICES

12.1 Any notice to be given hereunder by either Party to the other shall be in writing and shall be deemed given upon delivery, if sent by facsimile with confirmation of delivery or by overnight courier, or five (5) days after such notice is sent if sent by certified mail, return receipt requested to:

To LSSI:

LISTING SERVICES SOLUTIONS, INC.     ATTN: CONTROLLER  
PO BOX 10  
693 MAIN ST. AMHERST COMMONS  
BLDG C, 2ND FLOOR  
LUMBERTON, NJ 08048-0010

To U S WEST:     U S WEST  
Executive Director Interconnect Services  
1801 California, Suite 2410  
Denver, Colorado 80202

Copy to:     U S WEST Law Department  
General Counsel  
1801 California, Suite 5100  
Denver, Colorado 80202

12.2 The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section 12.

### 13. RELATIONSHIP OF PARTIES

13.1 The relationship of the Parties is that of independent contractors. Nothing contained herein shall constitute the Parties as joint ventures, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

### 14. COMPLIANCE WITH LAWS

14.1 The Parties shall comply with all federal, state and local laws and regulations applicable to their performance under this Agreement.

### 15. FORCE MAJEURE

15.1 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, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). No delay or other failure to perform shall be excused pursuant to this Section 15 unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations. 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. In the event of such performance delay or failure by U S WEST, U S WEST agrees to resume performance in a nondiscriminatory manner.

### 16. SURVIVAL

16.1 Those sections of this Agreement which by their nature should survive the termination of this Agreement, including without limitation, sections 3.7, 8, 9, 10, 11, 13, 17, and 18, hereof shall survive the termination or expiration of this Agreement.

### 17. DISPUTE RESOLUTION

17.1 Any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") which cannot be settled

after good faith negotiation for thirty (30) days shall be resolved by arbitration initiated by written notice given by either Party and conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof and shall be noticed to the appropriate Public Utilities Commission. The arbitrator shall determine which Party or Parties will bear the costs of arbitration, including apportionment, if appropriate. The arbitration shall occur in Denver, Colorado and the governing law shall be Colorado law construed in accordance with the Act and the FCC's rules and regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of this state, without regard to its conflicts of laws principles, shall govern.

17.2 If a Dispute is submitted to arbitration pursuant to Section 17.1 above, the procedures described in this Section 17.2 shall apply, notwithstanding the then current rules of the AAA. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set forth below. Each Party may submit in writing to a Party, and that Party shall so respond, to an agreed amount of the following: interrogatories, demands to produce documents, and requests for admission. Not less than ten (10) days prior to the arbitration hearing, the Parties shall exchange witness and exhibit lists. Deposition discovery shall be controlled by the arbitrator. Additional discovery may be permitted upon mutual agreement of the Parties or the determination of the arbitrator. The arbitration hearing shall be commenced within thirty (30) days after a demand for arbitration by either Party. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within seven (7) days after the close of the hearings. The times specified in this Section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. The decision of the arbitrator shall be final and binding upon the Parties and judgment upon the award rendered by the arbitrator may be entered in a court having jurisdiction. The decision shall also be submitted to the Commission.

17.3 It is expressly agreed that either Party may seek injunctive relief or specific performance of the obligations hereunder in an appropriate court of law or equity pending an award in arbitration, including but not limited to immediate injunctive relief to prevent unauthorized use or disclosure of the DA List Information hereunder. If a party files a judicial or administrative action asserting claims subject to arbitration, as prescribed herein, and the other party successfully stays such action and/or compels arbitration of said claims, the Party filing said action shall pay the other Party's costs and expenses incurred in seeking such stay and/or compelling arbitration, including reasonable attorneys' fees.

18. MISCELLANEOUS

18.1 This Agreement constitutes the entire Agreement between the Parties and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both Parties. No waiver of any provision hereof shall be effective unless in writing signed by the Party alleged to have waived such provision. Any single waiver shall not operate to waive subsequent or other defaults.

18.2 In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

18.3 Neither Party may assign, transfer (whether by operation of law or otherwise) or delegate this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Any attempted assignment or transfer that is not permitted under the provisions of this Section 18.3 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 permitted assigns. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement.

18.4 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Listing Services Solutions, Inc.

U S WEST Communications, Inc.

Signature:



Signature:

Name Printed/Typed: PAUL V. GALLAGHER

Name Printed/Typed:

Title: VICE PRESIDENT

Title:

Exhibit A

Directory Assistance List - Price Schedule

<u>Product Feature</u>	<u>Price</u>
<b>Directory Assistance List</b>	
Initial Database Load.....	\$ .05 Per listing record
Daily Updates.....	\$ .06 Per update record

Reloads of the database will be available at a 20% discount off the initial load price.

**One-Time Set-up Fee**

Charges for set-up of an original database load or reload will be billed at current labor costs ..... \$66.33 Per hour

**Output Charges**

Tapes, magnetic or cartridge (*charges only apply if this is selected as the method for scheduled delivery of daily update files – do not apply to delivery of initial database load(s)*) ..... \$30.00 Per tape

File Transmission Charges ..... \$ .002 Per record transmitted

Shipping Charges will be billed at the actual rate for the delivery method selected.

## Exhibit B

### Letter of Agency

If LSSI is an agent for a telecommunications carrier, a competing provider of telephone exchange service or telephone toll service ("Carrier") to provide DA services on behalf of that Carrier, the Letter of Agency between LSSI and Carrier which will be provided to U S WEST pursuant to Section 1.2, should contain, at a minimum, these key provisions:

1. An agreement exists between LSSI and the Carrier under which LSSI has agreed to provide DA services to the Carrier's end users as an agent for the Carrier;
2. The effective date and term of the agreement;
3. Signatures of authorized representatives of LSSI and Carrier.

Exhibit C  
Directory Assistance List - Order Form

I. Billing Information:

Bill To: \_\_\_\_\_ Date Order Completed JULY 28, 1998  
LSSI LISTING SERVICES SOLUTIONS, INC.  
Attention PAUL GALLAGHER  
Address PO BOX 10, 693 MAIN ST  
City/State/Zip LUMBERTON, NJ 08048-0010 Telephone # 609 702 8228

II. Media Selection:

(Check box for desired media)

(Allow a maximum of 30 days from date order completed for initial load.)

Electronic Transmission  Tape  3490 COMPACTS PREPARED

III. Electronic Transmission Delivery Method:

NDM \_\_\_\_\_ IP Address \_\_\_\_\_  
or  
FTP \_\_\_\_\_

Due Date \_\_\_\_\_

IV. Tape Delivery Method:

Ship Via: Overnite  US Mail \_\_\_\_\_ Other \_\_\_\_\_  
Ship To LISTING SERVICES SOLUTIONS INC Due Date AUGUST 17, 1999 (OR EARLIER IF POSSIBLE)  
Attention NELSON COOPER  
Address CAPE FEAR BLDG SUITE 310, 3200 CHAPEL HILL/NELSON BLVD  
City/State/Zip RESEARCH TRIANGLE PARK, NC Telephone # 919 485 8505  
27709-4369

V. Listings to be included in the File:  
 (Check the appropriate choice(s))

All U S WEST Listings and  
 other CMRS or LEC listings  
 not requiring authorization

Other Exchange Carrier Listings  
 (see attached letter of  
 authorization(s).

VI. Geographic Scope of File:  
 (Check the appropriate choice)

Specific State

U S WEST 14-State Region

Other see below

Enter other geographic scope requirements (by White Page Directory Codes or Area Codes) for  
 which you need listings below. Please attach another sheet if you need additional space.

WPDC	Area Code (NPA)	Directory Name	State
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Requests for geographic scoping below WPDC level must be negotiated with U S WEST.

Cartridge Tape

Magnetic Tape

BPI: 1600 \_\_\_\_\_ or 6250 \_\_\_\_\_

Test Tape

EBCDIC

Specialized Instructions: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Exhibit D

### Letter of Authorization

Where LSSI is required to negotiate a separate listing usage agreement with any CMRS or LEC in accordance with Section 2.3 above, the letter of authorization provided to U S WEST, between LSSI and CMRS or LEC, shall contain, at a minimum, these key provisions:

1. An agreement exists between the two parties, allowing LSSI to obtain the CMRS's or LEC's listings from the U S WEST database;
2. Signatures of the representatives for both parties;
3. Date on which LSSI is authorized to begin receiving the CMRS's or LEC's listings from U S WEST;
4. The effective date and term of the agreement;