

NEW MEXICO CLASS SETTLEMENT AGREEMENT

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NEW MEXICO CLASS SETTLEMENT AGREEMENT

The Settling Defendants, consisting of CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC (“**CenturyLink**”), Level 3 Communications, LLC, Level 3 Communications, Inc., and Level 3 Telecom Holdings, Inc. (collectively “**Level 3**”), and WilTel Communications, LLC, (“**WilTel**”) and their respective predecessors, successors, assigns, parents, affiliates and subsidiaries, by and through their undersigned counsel, and the Named Plaintiffs, to the extent of their individual and representative interests, by and through the undersigned Plaintiffs’ Counsel, hereby enter into this Settlement Agreement (“**Agreement**”), as of October 21, 2014, providing for settlement of the claims described below, pursuant to the terms and conditions set forth below, subject to the approval of the Court.

WHEREAS, Plaintiffs’ Counsel have filed a Class Action Complaint (the “**Class Complaint**”) under the caption *Fager v. CenturyLink Communications, LLC*, Case No. 1:14-cv-00870-JCH-KK, in the United States District Court for the District of New Mexico, arising out of the Settling Defendants’ installation, occupation, maintenance, and use of fiber-optic cable and related telecommunications equipment within railroad rights of way located in New Mexico;

WHEREAS, the Class Complaint seeks certification of a class of owners of land in New Mexico adjoining or underlying the rights of way in which the Settling Defendants installed fiber-optic cable;

WHEREAS, the Settling Defendants acknowledged that they have installed Telecommunications Cable Systems in New Mexico rights of way, have asserted a right to maintain the same, and have denied and continue to deny the claims made in *Fager*, and have denied and continue to deny any wrongdoing or liability of any kind in relation to such claims;

WHEREAS, the Settling Defendants and Plaintiffs’ Counsel have reached agreement on the terms and conditions of settlement of the claims asserted in *Fager*;

WHEREAS, Plaintiffs’ Counsel have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Class Complaint;

WHEREAS, the Class Representatives and the Settlement Class, by and through Plaintiffs’ Counsel, and the Settling Defendants, by and through their counsel, have agreed that the claims of New Mexico landowners can be resolved through settlement;

WHEREAS, after analyzing the facts and law applicable to the claims at issue, and taking into account the burdens, risks, uncertainties, and expense of litigation, as well as the fair, cost-effective, and assured method of resolving claims of the Settlement Class under this Agreement, Plaintiffs’ Counsel have concluded that this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, the Settling Defendants have similarly concluded that this Agreement is desirable in order to reduce the time, risk, and expense of multiple-claim litigation, and to resolve finally and completely the Settlement Claims of the Settlement Class; and

WHEREAS, the Parties agree that all Persons who would otherwise qualify as members of the Settlement Class shall have the right to exclude themselves (“opt out”) from the Settlement Class under Rules 23(b)(3) and 23(c)(2) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) as provided in this Agreement;

NOW, THEREFORE, the undersigned Parties stipulate and agree that all Settlement Claims of the Settlement Class against the Settling Defendants and the Released Parties shall be finally settled and resolved on the terms and conditions set forth below, subject to the Court’s approval of this Agreement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).

I. Definitions

In addition to the defined terms set forth in the foregoing introduction and recitals, the following terms shall have the meanings set forth below for the purposes of this Agreement and its Exhibits. Where the context so indicates or requires, defined terms stated in the singular shall be deemed to include the plural and vice versa.

“**Action**” means the civil action initiated by the Class Complaint.

“**Administrative Account**” means the account from which costs of administration of the Agreement shall be paid, as more fully described in Section III.B below.

“**Agreement**” means this Settlement Agreement.

“**Benefits**” includes New Mexico Non-Land-Grant Benefits and 1875 Land-Grant Benefits.

“**Cable Side**” means, for any New Mexico Segment, the side of the Center Line of the Segment on which any component of a Settling Defendant’s Telecommunications Cable System has been installed. In any New Mexico Segment in which a Settling Defendant has installed one or more components of its Telecommunications Cable Systems on opposite sides of the Center Line, each side shall be a Cable Side.

“**Cash Entry Certificate**” means a copy of the cash entry certificate that was filed with the General Land Office and which reflects a legal description of the property covered by the certificate and shows that such property includes the Qualified Claimant’s Qualified Parcel.

“**Center Line**” means the center line of the Right of Way in any New Mexico Segment or New Mexico Settlement Corridor.

“**Claim**” means a claim by a Class Member for any Benefits under this Agreement.

“**Claim Deadline**” means the date that is one-hundred twenty (120) days after the date of mailing of the Notice of Final Approval Package.

“**Claim Forms**” means the form attached as Exhibit G(1)-(2) hereto.

“**Claimant**” means a Class Member who submits a Claim Form or otherwise purports to make a Claim.

“**Claims Administrator**” means Rust Consulting, Inc. of Minneapolis, Minnesota.

“**Claims Administrator Telecommunications Cable System Easement Deed**” means any Telecommunications Cable System Easement Deed to be executed and delivered by the Claims Administrator pursuant to the authority of Fed. R. Civ. P. 70, as directed by the Court in the Order and Judgment, and which shall be in the form of Exhibit I.

“**Class Complaint**” means the Class Action Complaint in *Fager*, in the United States District Court for the District of New Mexico.

“**Class Member**” means any Person who is a member of the Settlement Class.

“**Class Representatives**” means Dale Fager, Jr., Michele D. Fager, and Gunter-Miller Enterprises, Ltd.

“**Compensation Period**” for a parcel of Covered Property is the period from the Construction Date for that parcel to the date that is sixty (60) days after the Effective Date.

“**Construction Date**” for a parcel of Covered Property is the date of installation, as set forth in Exhibit A hereto, of the Telecommunications Cable Systems in the Right of Way that adjoins, underlies, or includes the Covered Property.

“**Court**” means the United States District Court for the District of New Mexico.

“**Court Notice**” means notice of this Agreement, in accordance with Fed. R. Civ. P. 23, to Class Members which, subject to approval of the Court, shall be in the form of Exhibit C hereto.

“**Covered Property**” means, for any New Mexico Segment, the Cable Side of the Segment and a parcel of real property owned by one or more Class Members that adjoins, underlies, or includes all or any portion of the Cable Side of the Segment. A parcel of Covered Property may adjoin, underlie, or include the Cable Side of more than one Segment or may be entirely within the Cable Side of one or more Segments. A parcel of property does not adjoin a Segment if it is separated from the Segment by a navigable river, railroad, or numbered state or federal highway, or if a separate piece of property lies between the Segment and the property in question. For purposes of this Agreement, a parcel of property shall be deemed to adjoin a Segment if it is separated from the Segment by a non-navigable river or a street, road, or highway, other than a numbered state or federal highway.

“**Current Landowner**” means a Class Member who owns a fee interest in Covered Property as of the date that is sixty (60) days after the Effective Date.

“**Database of Identification Information**” means, except as limited in Section III.B.4, any information, maps, schedules, documents, or records that are (1) generated in the process of identifying Persons who own Covered Property or to whom Court Notice shall be given and (2)

included in the database created by Data Mapping Solutions, L.L.C. (“Data Mapping Solutions”).

“**Designate**” means for a Settling Defendant to list a New Mexico Settlement Corridor for inclusion under this Agreement by listing it in Exhibit A.

“**Easement Deed by Court Order in Settlement of Landowner Action**” means the judicial easement to be issued by the Court simultaneously with entry of the Order and Judgment, in the form of Exhibit K hereto.

“**Effective Date**” means the last of: (1) the date on which the Order and Judgment becomes Final; (2) the date on which an order awarding attorneys’ fees to Settlement Class Counsel with respect to this Agreement becomes Final; and (3) the date on which all periods during which any Party to this Agreement may exercise a right of withdrawal have expired.

“**Forum Authorized to Confirm Land Claims**” means the court of private claims established under the Act of March 3, 1891, 26 Stat. 854.

“**Fairness Hearing**” means the hearing to be conducted by the Court to determine the fairness, reasonableness, and adequacy of this Agreement pursuant to Fed. R. Civ. P. 23(e).

“**Final**” means, with respect to an order or judgment, that no timely appeals have been taken or that all appeals or other rights of review have been exhausted and that the order or judgment has not been vacated, reversed, or modified as a result.

“**Homestead Application**” means a copy of a homestead application that was filed with the General Land Office and which contains a legal description of the property covered by the application, and shows that such property includes the Qualified Claimant’s Qualifying Parcel.

“**Maximum Attorneys Fee Award**” means \$1,347,000.

“**Map of Definite Location**” means a copy of a map, plat, statement, certificate, report, or profile, which the pertinent railroad company filed pursuant to the pertinent land-grant act with the applicable governmental agency to locate the route of the railroad.

“**Named Plaintiffs**” means Plaintiffs in the Action.

“**New Mexico 1875 Land-Grant Benefits**” means, for each New Mexico Segment, \$0.75 per linear foot.

“**New Mexico Segment**” means a Segment in a New Mexico Settlement Corridor.

“**New Mexico Settlement Corridor**” “**Settlement Corridor**” and “**Corridor**” mean any corridor including Right of Way, which corridor a Settling Defendant has Designated in Exhibit A hereto.

“**New Mexico Non-Land-Grant Benefits**” means, for each New Mexico Segment, \$1.25 per linear foot.

“**Non-Cable Side**” means the portion of a Segment that is not the Cable Side.

“**Notice of Final Approval Package**” means a notice to be sent to Class Members, in the form of Exhibit F, that the Order and Judgment has become Final, and any Claim Forms that the Claims Administrator determines are applicable to a Class Member.

“**Objection Deadline**” means a date forty-five (45) days from the date the Court Notice is first mailed, or such other date before the Fairness Hearing as may be agreed by the Parties subject to the approval of the Court.

“**Opt-Out Deadline**” means a date forty-five (45) days from the date the Court Notice is first mailed, or such other date before the Fairness Hearing as may be agreed by the Parties subject to the approval of the Court.

“**Order and Judgment**” means an order or orders to be entered by the Court, substantially in the form of Exhibit E hereto or in a form that, collectively, is substantively the same as Exhibit E, finally approving this Agreement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e), finally certifying the Settlement Class under Fed. R. Civ. P. 23(b)(3) and 23(e), and making such other findings and determinations as are necessary and appropriate to effectuate the terms of this Agreement.

“**Parties**” means the Class Representatives and the Settling Defendants.

“**Persons**” means natural or legal persons, entities, and organizations of any kind.

“**Plaintiffs’ Counsel**” means Nels Ackerson and Kathleen C. Kauffman, Ackerson Kauffman Fex P.C.; Henry J. Price, Price, Waicukauski & Riley, LLC; Dan Millea and Eric Caugh, Zelle Hofmann, Voelbel & Mason, LLP; Andrew W. Cohen, Koonz, McKenney, Johnson, DePaolis & Lightfoot, LLP; Irwin B. Levin and Scott D. Gilchrist, Cohen & Malad, LLP; and John K. Silver, McClaugherty & Silver, PC.

“**Plaintiffs’ Counsel in Other Pending Cases**” means Nels Ackerson and Kathleen C. Kauffman, Ackerson Kauffman Fex P.C.; Henry J. Price, Price, Waicukauski & Riley, LLC; Dan Millea, Zelle Hofmann, Voelbel & Mason, LLP; Andrew W. Cohen, Koonz, McKenney, Johnson, DePaolis & Lightfoot, LLP; Irwin B. Levin and Scott D. Gilchrist, Cohen & Malad, LLP; Jack Baldwin, Baldwin & Baldwin, LLP; Arthur T. Susman, Susman, Hefner & Hurst, LLP; William T. Gotfryd; Seth A. Litman, Thompson Hine LLP; Mike Miller, Solberg, Stewart, Miller, Ltd.; Scott A. Powell, Hare, Wynn, Newell & Newton, L.L.P.; John C. Sullivan, Jr., Sullivan and Sullivan, and their respective co-counsel in any action asserting fiber-optic-cable right-of-way claims against a Settling Defendant, provided that, any lawyer or law firm appointed by the Court as Settlement Class Counsel shall not be Plaintiffs’ Counsel in Other Pending Cases.

“**Preemption Declaratory Statement**” means a copy of a preemption declaratory statement, preemption proof, homestead, preemption, and commutation proof or similar affidavit required by the General Land Office to be filed by preemption claimants, which reflects the legal description of the property covered by the Statement, and shows that such property includes the Qualified Claimant’s Qualifying Parcel.

“**Preliminary Approval**” means the entry by the Court of the Preliminary Approval Order.

“**Preliminary Approval Order**” means an order or orders, substantially in the form of Exhibit B hereto or in a form that, collectively, is substantively the same as Exhibit B, by which the Court provisionally certifies the Settlement Class, grants preliminary approval of this Agreement pursuant to Fed. R. Civ. P. 23(b)(3), 23(c)(1), and 23(e), and orders that notice be given to Class Members.

“**Qualified Claim**” means a Claim for Benefits for a Qualifying Parcel, which the Claims Administrator has determined to be eligible for payment upon submission of a properly executed Release of Claims or a properly executed Release of Claims and Telecommunications Cable System Easement Deed, in accordance with Section X below.

“**Qualified Claimant**” means a Claimant who has submitted a Qualified Claim for a Qualifying Parcel.

“**Qualifying Parcel**” means a parcel of Covered Property that adjoins, underlies, or includes all or any portion of the Cable Side of a Segment, and with respect to which one or more Claimants has submitted a Qualified Claim.

“**Release of Claims**” means a release in the applicable form of Exhibits J or J(1) hereto.

“**Released Parties**” means (1) the Settling Defendants; (2) any Right-of-Way Providers; (3) any Person to which a Settling Defendant has heretofore sold, granted, leased, or otherwise transferred all or any part of (or any right to use) any portion of a Telecommunications Cable System; (4) any Person to which a Settling Defendant hereafter sells, grants, leases, or otherwise transfers all or any part of (or any right to use) any portion of a Telecommunications Cable System; (5) any Person that has heretofore sold, granted, leased, or transferred to a Settling Defendant all or any part of (or any right to use) any portion of a Telecommunications Cable System; and (6) the predecessors, successors, and past and present predecessors in interest, predecessors in title, successors in interest, successors in title, members, partners, lessees, assigns, parents, subsidiaries, and affiliates, officers, directors, agents, attorneys, insurers, and employees of any Released Party included in clauses (1) through (6) of this paragraph.

“**Right of Way**” means all real property in any New Mexico Settlement Corridor that is or was used as a railroad right of way, in which any portion of a Telecommunications Cable System is located and which a Settling Defendant has Designated for inclusion in this Agreement. The term “Right of Way” is used in this definition in a generic sense and is not an attempt to define the actual legal ownership interest in real property of the Right-of-Way Provider, whether as an easement, in fee, or otherwise.

“**Right-of-Way Provider**” means, as to any Segment of any New Mexico Settlement Corridor, any railroad, and its predecessors, successors, predecessors in interest, predecessors in title, successors in interest, successors in title, members, partners, parents, subsidiaries, affiliates, lessees, and assigns, past or present, from which a Settling Defendant acquired, purported to acquire, or through which it claims rights to install, occupy, maintain, or use a

Telecommunications Cable System in that Segment, including without limitation the railroads and other entities set forth in Exhibit L hereto.

“**Segment**” means a portion of a New Mexico Settlement Corridor described by metes and bounds as follows: beginning at a specified point on the Center Line, thence right along a line perpendicular to the Center Line to the lateral boundary of the Corridor, thence right along the lateral boundary of the Corridor to a second point, thence right along a line perpendicular to the Center Line to the opposite lateral boundary of the Corridor, thence right along the lateral boundary of the Corridor to the intersection of that lateral boundary with a line perpendicular to the Center Line and passing through the point of origin; thence along that line to the point of origin. Segment boundary lines that are perpendicular to the Center Line shall be chosen so that (1) the per-linear-foot amount of Benefits calculated under this Agreement shall be identical for each linear foot of Right of Way included in any Segment and (2) a boundary line shall pass through (a) any point at which a component of a Telecommunications Cable System intersects (i) the Center Line or (ii) a lateral boundary of the Right of Way and (b) any point at which the boundary line of a Class Member’s Covered Property intersects or meets the lateral boundary of the Right of Way, *provided*, that if a Segment includes two Cable Sides, the amount of Benefits calculated under this Agreement shall be identical for each linear foot of Right of Way included in such Segment on the same Cable Side, but may be different for opposite Cable Sides in the same Segment.

“**Settlement Account**” means the account from which Benefits shall be paid to Qualified Claimants, all as more fully described in Section III.A.1 below.

“**Settlement Claims**” means all claims arising out of or relating to any Settling Defendant’s ownership, installation, occupation, maintenance, or use of a Telecommunications Cable System or any component of a Telecommunications Cable System, that has been installed on or in a New Mexico Settlement Corridor, or any other claims addressed in or arising out of the subject matter of this Agreement or the Class Complaint or that could have been alleged in the Class Complaint, including without limitation claims for trespass, unlawful entry, slander of title, quiet title, breach of covenant, unjust enrichment, criminal mischief, criminal trespass, inverse condemnation, conversion, conspiracy, injunctive relief, declaratory judgment, compensatory, consequential and punitive damages, and any and all such claims, including assigned claims, offsets, and counterclaims, whether known or unknown, whether or not concealed or hidden, asserted or unasserted, regardless of the legal theory, that are or may be asserted now or in the future by any or all Class Members, or their successors, heirs, or assigns, against a Settling Defendant and/or any Released Party, *provided*, however, that Settlement Claims do not include (1) claims against any Released Party arising out of the ownership, occupation, maintenance, or use of any telecommunications cable system, or any component of a telecommunications cable system, other than a Telecommunications Cable System, (2) claims for bodily injury or physical harm or damage to property located or situated outside the lateral boundaries of the Right of Way, (3) claims by Settling Defendants against any Right-of-Way Provider, insurer, or other third party for contribution, indemnification, or insurance benefits, which claims Settling Defendants specifically reserve-; or (4) claims arising out of alleged violations of this Agreement.

“**Settlement Class**” or “**Class**” means a class comprising all Persons who own or who claim to own, for any period of time during a Compensation Period, any Covered Property, *provided*, that “Settlement Class” or “Class” does not include: (1) Right-of-Way Providers and their predecessors, successors, parents, subsidiaries, and affiliates, past or present; (2) federal, state, and local governmental entities; (3) Native American nations and tribes; or (4) any Person who files a valid and timely exclusion on or before the Opt-Out Deadline.

“**Settlement Class Counsel**” means counsel appointed by the Court to represent the Settlement Class.

“**Settlement Documents**” means the applicable forms of the documents comprising Exhibits H and J hereto.

“**Settling Defendants**” means CenturyLink, Level 3, and WilTel, and their respective predecessors, successors, assigns, parents, affiliates, and subsidiaries.

“**Summary Notice**” means notice of this Agreement, in accordance with Fed. R. Civ. P. 23, in the form of Exhibit D hereto, which shall be published in the manner ordered by the Court.

“**Telecommunications Cable System**” means a telecommunications cable system (including underground and surface cables, conduits, wires, fibers, pipes, ducts, waveguides, surface testing terminals, manholes, markers, regeneration huts, hand holes, splice vaults, poles, optical or electronic equipment, signs, and related facilities necessary and appropriate for installation, use, repair, or maintenance of such components), and any components thereof that are (1) located within a Right of Way and (2) have been, are now, or are hereafter constructed, installed, owned, or operated by any Settling Defendant, by any parent, subsidiary, or affiliated entity of any Settling Defendant, or by any person or entity to whom a Settling Defendant has heretofore sold, granted, leased, or otherwise transferred, or hereafter sells, grants, leases, or otherwise transfers, the right to operate any portion of a telecommunications cable system.

“**Telecommunications Cable System Easement Deed**” means the form of permanent telecommunications easement set forth as Exhibit H hereto.

“**Tract Book Pages**” means a copy of the pages of the tract book maintained by the General Land Office, and which reflect a legal description of the property covered by the pages, and show that the property includes the Qualified Claimant’s Qualifying Parcel.

II. Benefits Payable

A. Generally

1. Benefits are attributable to a Qualifying Parcel in which one or more Settling Defendants has installed a Telecommunications Cable System or any component thereof. Each Settling Defendant shall be severally responsible to pay its proportionate share of the Benefits to Qualified Claimants for each Qualifying Parcel in which it has installed a Telecommunications Cable System, or any component thereof.

2. The Benefits payable by a Settling Defendant with respect to a Qualifying Parcel are attributable to any New Mexico Segment that the Qualifying Parcel adjoins, underlies, or includes, as provided in Sections II.B, II.C, and II.D below.

3. The amount of Benefits attributable to a New Mexico Segment shall be the same regardless of the number of Settling Defendants that have installed any component of a Telecommunications Cable System on the same Side of the Center Line within that Segment. If only one Settling Defendant has installed a Telecommunications Cable System or any component thereof in a Qualifying Parcel, that Settling Defendant shall pay all the Benefits; if two Settling Defendants have installed a Telecommunications Cable System or any component thereof in a Qualifying Parcel, each Settling Defendant shall pay half the Benefits; if three Settling Defendants have installed a Telecommunications Cable System or any component thereof in a Qualifying Parcel, each Settling Defendant shall pay one-third the Benefits.

4. Benefits are determined for each Qualifying Parcel on a per-linear-foot basis.

5. The Claims Administrator shall be responsible for reviewing and evaluating Claims in accordance with the provisions of this Agreement to determine if they are Qualified Claims, and, if so, the amount of Benefits payable.

B. Establishing a Claim for Benefits

1. New Mexico Non-Land-Grant Benefits shall be attributable to any New Mexico Segment that adjoins, underlies, or includes a Qualified Claimant's Qualifying Parcel, if: (a) the Class Member seeking to become a Qualified Claimant submits a Claim for New Mexico Non-Land-Grant Benefits and provides the Claims Administrator with (i) a copy of a deed or certificate of title, for each Qualifying Parcel, which provides a legal description of the real property, shows that it adjoins, underlies, or includes the Segment on the Cable Side, and shows fee ownership of that real property by that Class Member during at least some portion of the Compensation Period; and (ii)(A) a patent, deed, or other instrument of conveyance, which alone or in conjunction with an order entered by a federal court and supplied by the Class Member, shows that the Segment was conveyed by the United States or otherwise taken out of or excluded from the public domain prior to the date of the pertinent land grant statute or (B) a patent which shows that the Segment was conveyed by the United States or otherwise taken out of or excluded from the public domain after the date of the pertinent land grant statute and (I) a Cash Entry Certificate, Homestead Application, or Preemption Declaratory Statement, and the corresponding Tract Book Pages, both of which evidence an entry date by the patentee prior to the date of the pertinent land grant statute, (II) a Map of Definite Location that evidences that the right of way was designated for location on the Segment after the date of the patent, or (III) a Cash Entry Certificate, Homestead Application, or Preemption Declaratory Statement, and the corresponding Tract Book Pages, and a Map of Definite Location, all of which evidence that the right of way was designated for location on the Segment after the entry date by the patentee, and (b) a Settling Defendant does not meet its burden of showing that no Benefits are attributable to that Segment, as provided in Section II.B.3 below. A Claimant who seeks to establish that a Segment was taken out of the public domain by virtue of any right or title derived from the French, Spanish or Mexican government, must present an order entered by a Forum Authorized to Confirm Land Claims or by a federal court upon review of an order of a Forum Authorized to Confirm Land

Claims and the patent that issued from the United States government pursuant to such an order. New Mexico Non-Land-Grant Benefits shall be attributable to the Segment that such a Claimant's Qualifying Parcel adjoins, underlies, or includes, only if the order or the patent shows on its face that the Segment was not part of the public domain as of the date of the pertinent land grant statute. A Class Member who seeks to have New Mexico Non-Land-Grant Benefits attributed to a New Mexico Segment but fails to satisfy the requirements set forth in Section II.B.1.(a) above, and has submitted an otherwise Qualified Claim for New Mexico 1875 Land-Grant Benefits, under Section II.B.2 below, shall be paid 1875 Land-Grant Benefits.

2. 1875 Land-Grant Benefits shall be attributable to any New Mexico Segment that adjoins, underlies, or includes a Qualified Claimant's Qualifying Parcel, if: (a) the Class Member seeking to become a Qualified Claimant submits a Claim for 1875 Land-Grant Benefits and provides the Claims Administrator with a copy of a deed or certificate of title, for each Qualifying Parcel, which provides a legal description of the real property, shows that it adjoins, underlies, or includes the Segment on the Cable Side, and shows fee ownership of that real property by that Class Member during at least some portion of the Compensation Period; (b)(i) the Class Member seeking to become a Qualified Claimant provides the Claims Administrator with copies of one or more patents issued by the United States that show that the United States conveyed the Cable Side of the Segment to the Class Member or the Class Member's predecessor in interest without reserving an interest in or excepting the Cable Side of the Segment or (ii) all Qualifying Parcels with respect to which the Class Member seeks to become a Qualified Claimant total no more than 350 feet of linear footage; and (c) a Settling Defendant does not meet its burden of showing that no Benefits are attributable to that Segment, as provided in Section II.B.3 below.

3. (a) A Settling Defendant meets its burden of showing that no Benefits are attributable to a New Mexico Segment by submitting to the Claims Administrator a document by which a Class Member or the Class Member's predecessor in title expressly granted to the Settling Defendant the right to use the Right of Way for telephone or telecommunications purposes.

(b) A Settling Defendant also meets its burden of showing that no Benefits are attributable to a New Mexico Segment by submitting to the Claims Administrator evidence that the documentation submitted by the Class Member, if any under Section II.B.1.(a)(ii), II.B.2.(b)(i), does not apply to the Segment or otherwise does not comport with the requirements of this Agreement.

4. The copies of all deeds or certificates of title, patents, or other documentation submitted by Class Members pursuant to this Section II.B must either (a) have been certified by the Register of Deeds, Registrar of Titles, County Clerk, or other similar official of the relevant county or (b) show on their face pertinent recording information, including date and office of recording, conveyance book and page, and/or entry number, or (c) show on their face that they were obtained from an office of the Bureau of Land Management or be accompanied by a separate writing issued by the Bureau of Land Management confirming that the document was issued by the Bureau of Land Management, or (d) be accompanied by a document titled "Land Patent Details" bearing indicia that the "Land Patent Details" document was printed from

the Bureau of Land Management General Land Office Records Automation Website – <http://www.glorerecords.blm.gov/>.

5. Notwithstanding anything to the contrary contained in this Section II.B, Benefits shall be attributable to a New Mexico Segment for purposes of the Claim of a Class Member who submits an otherwise Qualified Claim with respect to that Segment and who has not shown ownership of real property adjoining that Segment on the Cable Side, if and only if (a) the Class Member shows ownership by that Class Member of the fee interest underlying the Cable Side of the Segment during at least some portion of the Compensation Period by providing the Claims Administrator with documentation sufficient to rebut the presumption of ownership by the adjacent owner as provided in Section X.D.1 below and (b) the Class Member complies with all requirements set forth above to qualify for the type of Benefits for which the Class Member applies.

6. Nothing contained in this Section II.B, including those provisions that require Claimants to present documents that show that they own a fee interest in Covered Property, shall be construed to require a Qualifying Claim to include documents to show that the Right-of-Way Provider does not own fee title to the Right-of-Way.

7. To the extent economically feasible, the Claims Administrator may contract with an entity that will, at Class Members' option and expense, obtain one or more patents under Section II.B.2 for Class Members seeking to become Qualified Claimants.

C. Allocation of Benefits

1. For a Qualified Claimant who has owned a fee interest in a Qualifying Parcel throughout the entire Compensation Period, the Benefits payable for that Qualifying Parcel shall be equal to (a) the applicable Benefits for the Segment that the Qualifying Parcel adjoins, underlies, or includes multiplied by (b) the number of linear feet of Right of Way in the portion of the Segment that the Qualifying Parcel adjoins, underlies, or includes. (If a New Mexico Segment includes two Cable Sides, so that more than one amount of Benefits is attributable to the Segment, Benefits shall be based on the amount of Benefits corresponding to each Cable Side that the Qualifying Parcel adjoins, underlies, or includes.) If a Qualifying Parcel adjoins, underlies, or includes more than one Segment, the multiplication described above shall be performed for each such Segment, and the amount of Benefits for the entire Qualifying Parcel shall be the sum of the resulting products. The Claims Administrator shall determine the linear footage of Segments and Qualifying Parcels for purposes of the foregoing calculations based on information provided by the Claimant and mapping and scaling data provided by the Settling Defendants through Data Mapping Solutions.

2. If the same person or persons has owned a fee interest in a Qualifying Parcel throughout the entire Compensation Period, then Benefits payable for the Qualifying Parcel shall be calculated as in the previous paragraph and no other Benefits shall be paid as to that Qualifying Parcel. If the same person or persons has not owned the Qualifying Parcel throughout the entire Compensation Period, then Benefits payable to each Class Member who submits a Qualifying Claim for the Qualifying Parcel shall be equal to the amount calculated as in the previous paragraph multiplied by a fraction, the denominator of which is the total number

of months in the Compensation Period for that Qualifying Parcel and the numerator of which is the total number of months that Class Member has owned the Qualifying Parcel. In calculating the number of months each Class Member has owned the Qualifying Parcel during the Compensation Period, ownership during a portion of a month shall be pro-rated based on the number of days of ownership during the month in question.

3. In determining the total number of days that a Class Member who is a natural person has owned a Qualifying Parcel, any period of ownership by the Class Member's deceased ancestor or ancestors shall be included, provided that the Class Member (a) submits with his or her Claim (i) a personal representative's deed or a beneficiary's deed that shows that the Qualifying Parcel was acquired by inheritance, and (ii) a deed or certificate of title that meets the requirements of Sections II.B.1.(a)(i) or II.B.2.(a) and II.B.4 above and reflects the ancestor's or ancestors' acquisition of the Qualifying Parcel, and (b) attests in the Claim Form that the Class Member acquired by inheritance any claims that his or her deceased ancestor owned arising out of the Settling Defendants' installation, occupation, maintenance, and use of Telecommunications Facilities upon the Qualifying Parcel.

4. The amount of Benefits payable with respect to a Qualifying Claim shall neither be decreased nor increased because any other Class Member has made or has not made a Claim for Benefits with respect to the same Qualifying Parcel. In the event that more than one Claim is submitted for the same period of time and the same Qualifying Parcel, the Claims Administrator shall determine finally the amount of Benefits, if any, to be paid on each such Claim. In no event shall the total amount of Benefits payable for a Qualifying Parcel be increased as a result of such duplicate Claims.

5. Benefits shall be calculated per Qualifying Parcel, regardless of the number of Qualified Claimants who are co-owners of that Qualifying Parcel. Benefits shall be payable jointly to all Qualified Claimants who are or were co-owners of a Qualifying Parcel, for the period of time during which they were co-owners.

D. Class Representative Service

In addition to all other benefits to which the New Mexico Class Representatives may be entitled under this Agreement, they may apply to the Court for an additional award, as compensation for service as Class Representatives, in the following amounts: Dale Fager, Jr. and Michele D. Fager: \$1,300 jointly, and Gunter-Miller Enterprises, Ltd.: \$1,300. Except as provided herein, the New Mexico Class Representatives shall receive no compensation for service as Class Representatives.

E. Settlement Class Counsel Fees and Expenses

1. Settlement Class Counsel may seek from the Court a cash award of fees and expenses from the Settling Defendants, in an amount not to exceed the Maximum Attorneys' Fee Award, to which the Settling Defendants will not object. Except as provided herein, no fees or costs shall be recoverable by Settlement Class Counsel, whether from the Settling Defendants or from Class Members. Under no circumstances shall Settling Defendants have any obligation to

pay attorneys' fees or expenses to any person or persons on account of or with respect to the settlements effectuated by this Agreement in excess of the Maximum Attorneys' Fee Award.

2. Subject to Sections II.E.4 and 5 below, the Settling Defendants shall deposit any attorneys' fee award approved by the Court, which shall not exceed the Maximum Attorneys' Fee Award, into the interest-bearing escrow account, established with U.S. Bank in New York, New York, no later than ten (10) days after the date on which the Order and Judgment becomes Final.

3. The obligation of the Settling Defendants to pay attorneys' fees and expenses shall be several and divisible. Each Settling Defendant shall have the obligation to pay only that proportion of the aggregate cash attorneys' fee award approved by the Court (which shall not exceed the Maximum Attorneys' Fee Award) which the total number of linear feet of Right of Way Designated by that Settling Defendant under this Agreement bears to the total number of linear feet of Right of Way Designated by all Settling Defendants under this Agreement.

4. In the event that the Court enters an order or orders that provide for an award of attorneys' fees and expenses to Settlement Class Counsel, or an aggregate award of attorneys' fees and expenses to Settlement Class Counsel and Plaintiffs' Counsel in Other Pending Cases, in excess of the Maximum Attorneys' Fee Award, Settlement Class Counsel agree that the amount of attorneys' fees and expenses that Settling Defendants shall be obligated to pay to Settlement Class Counsel shall be no more than the Maximum Attorneys' Fee Award, minus any amount of fees and expenses Settling Defendants are required to pay to Plaintiffs' Counsel in Other Pending Cases.

5. In the event that the Court enters an order or orders that provide for an aggregate award of attorneys' fees and expenses to Settlement Class Counsel, Plaintiffs' Counsel in Other Pending Cases, and any other counsel, which, after the reduction called for in Section II.E.4 above, exceeds the Maximum Attorneys' Fee Award, Settlement Class Counsel may, in their sole discretion, agree to reduce the fee award allocated to them so as to reduce the aggregate award of attorneys' fees and expenses to the Maximum Attorneys' Fee Award. If Settlement Class Counsel do not agree to a reduction of the aggregate fees and expenses payable by the Settling Defendants to the Maximum Attorneys' Fee Award, Settling Defendants shall have the right to withdraw from this Agreement.

III. Funding

A. Settlement Account

1. To facilitate payment of Benefits to Qualified Claimants, the Claims Administrator shall establish the Settlement Account. At the Settling Defendants' option, the Settlement Account (a) shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and all rules and regulations thereunder and (b) may be used for the deposit of funds and the payment of claims under other fiber-optic right-of-way settlement agreements. The Claims Administrator shall pay Qualified Claims, and any income taxes payable with respect to interest earned on the Settlement Account, out of the Settlement Account. The Settling Defendants shall make an initial deposit into the

Settlement Account, in an amount to be determined by the Claims Administrator, thirty (30) days after the Order and Judgment become Final. Thereafter, each Settling Defendant, as directed by the Claims Administrator, shall provide sufficient ongoing funding of the Settlement Account to enable Class Members who have submitted Qualifying Claims with respect to a Right of Way which that Settling Defendant has Designated to be paid in a timely fashion. The Claims Administrator shall refund to each Settling Defendant (a) any difference between the amount that it has contributed to the Settlement Account and the total amount of payments for which it is responsible and (b) any difference between the portion of the net interest income earned by the Settlement Account that is proportional to its contributions to the Settlement Account and any accrued but unpaid taxes for which the Settling Defendant is responsible. The obligations of each Settling Defendant to fund the Settlement Account are several and divisible.

2. No Benefit payments may be made to any Class Members under this Agreement (nor shall the Settling Defendants incur any obligation therefor) until the Effective Date.

3. The obligations of each Settling Defendant to fund the Settlement Account are several and divisible. If a Qualifying Claim under this Settlement Agreement is not paid as a result of a Settling Defendant's failure to provide sufficient funding, and the Settling Defendant does not cure such failure within thirty (30) days of having received written notice thereof by the Claims Administrator, then that Settling Defendant is in violation of its obligations under this Agreement and the Class Member whose Qualified Claim has not been paid shall retain all rights against that Settling Defendant under this Agreement or otherwise.

B. Administrative Costs; Administrative Account

1. Settling Defendants shall be severally responsible for advancing and paying the cost of providing the Court Notice, Summary Notice, Notice of Final Approval Package, and the reasonable costs of administering this Agreement. The Claims Administrator shall establish the separate Administrative Account to pay administrative costs. At the Settling Defendants' option, the Administrative Account (a) shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and all rules and regulations thereunder and (b) may be used for the deposit of funds and the payment of administrative costs under other fiber-optic right of way settlement agreements.

2. The Settling Defendants shall make an initial deposit into the Administrative Account, in an amount to be determined by the Claims Administrator, ten (10) days after Preliminary Approval, and shall make such additional deposits thereafter as the Claims Administrator deems necessary for the reasonable expenses of administering the Agreement. After all administrative costs have been paid, each Settling Defendant shall be entitled to a refund of any funds remaining in the Administrative Account. The refund shall be proportionate to contributions made by the Settling Defendants to the Administrative Account.

3. Class Members shall have no obligation to pay for any claims-processing expenses incurred by the Claims Administrator in responding to Class Member inquiries, or any other settlement-related administrative expenses incurred by the Claims Administrator.

4. The Database of Identification Information shall be considered proprietary and shall belong to Settling Defendants. Ownership of portions of the Database of Identification Information pertaining to a Right of Way Designated by a single Settling Defendant shall be exclusive to that Settling Defendant. If a Right of Way is Designated by more than one Settling Defendant, each Settling Defendant shall have joint ownership of the portions of the Database of Identification Information pertaining to that Right of Way. Each such joint owner shall have the right to use the Database of Identification Information without permission from or compensation to other joint owners, but no joint owner may sell, lease, or provide to third-parties access to the Database of Identification Information without the express written consent of all joint owners. Data in the Database of Identification Information shall not be voluntarily disclosed to third persons, and Settlement Class Counsel shall (a) reasonably oppose and (b) provide prompt notice to the affected Settling Defendant(s) of any effort to obtain disclosure of data in the Database of Identification Information sought by third persons from Settlement Class Counsel through discovery, subpoena, or court or other process, regardless of whether this Agreement is approved or not by the Court. Notwithstanding the foregoing, the Claims Administrator and Settlement Class Counsel shall have the right to use the Database of Identification Information as necessary to effectuate this Agreement, including the processing of Claims. Nothing in this Agreement shall be construed to grant or to provide a basis for the assertion by any Settling Defendant of ownership over the facts – as opposed to the compilation of the facts by or on behalf of Settling Defendants – input into the Database of Identification Information, over any documents or other databases in which those facts are contained, including without limitation any information supplied by a Right-of-Way Provider, or any map, tax parcel data, or other information supplied by a county recorder’s office, or over any document filed in the public record.

C. Settling Defendants’ Proportional Financial Responsibility

1. Each Settling Defendant shall have the several obligation to make deposits into the Administrative Account and to pay the settlement administration costs in proportion to the total number of linear feet of Right of Way Designated by the Settling Defendant under this Agreement.

2. Each Settling Defendant shall have the several obligation to contribute funds to the Settlement Account to pay Benefits only for Qualified Claims regarding Right of Way Designated by that Settling Defendant.

3. If no Class Member submits a Qualified Claim concerning a particular parcel of Covered Property, then no Benefits of any sort shall be paid with respect to that Covered Property, and the Settling Defendants shall have no obligation to make any contribution to the Settlement Account with respect to such Covered Property.

IV. Claim Form, Release of Claims, and
Telecommunications Cable System Easement Deed

A. Claim Form

1. Each Claimant shall complete, execute, and return to the Claims Administrator a Claim Form in the applicable form of Exhibits G(1) – (2) hereto, as determined by the Claims

Administrator. If the Claimant is a co-owner of Covered Property, the Claimant shall be deemed to have made a Claim for Benefits on behalf of all co-owners of the Covered Property. If the Claims Administrator determines that the Claim made by a co-owner of Covered Property is a Qualified Claim, all co-owners shall be deemed Qualified Claimants. If co-owners of Covered Property submit more than one Claim Form, the Claims Administrator shall consider all the Claim Forms and the documentation submitted with them and make a single determination whether the combined submission is a Qualified Claim and, if so, all the co-owners shall be deemed Qualified Claimants.

B. Release of Claims

1. All Qualified Claimants, including each co-owner of a Qualifying Parcel, must complete, execute, and return to the Claims Administrator for delivery to the Settling Defendants a Release of Claims in the applicable form of Exhibits J or J(1) hereto, as determined by the Claims Administrator. The spouse of any Qualified Claimant also must execute the Release of Claims. All Qualifying Claimants must submit a Release of Claims for each Settling Defendant who has installed any component of a Telecommunications Cable System in the Qualifying Claimant's Qualifying Parcel.

C. Telecommunications Cable System Easement Deed

1. All Qualified Claimants who are Current Landowners, including each co-owner of a Qualifying Parcel, must complete, execute, and return to the Claims Administrator for delivery to the Settling Defendants a Telecommunications Cable System Easement Deed in the form of Exhibit H hereto. The spouse of any Qualified Claimant who is a Current Landowner also must execute the Telecommunications Cable System Easement Deed.

2. At its option, each Settling Defendant may, after the Effective Date, file, record, and index a copy of (1) the Easement Deed by Court Order in Settlement of Landowner Action entered in the Action; (2) any Claims Administrator Telecommunications Cable System Easement Deed; and (3) any executed Telecommunications Cable System Easement Deed, in the appropriate judgment or land records of each county in New Mexico in which Covered Property is located in order to give constructive and record notice of the existence and terms of the Telecommunications Cable System Easement to the successors in title or interest of the Class Members. Each Settling Defendant may also, as may be necessary for local recordation purposes, record supplemental orders effectuating any Easement Deed by Court Order in Settlement of Landowner Action, or any Claims Administrator Telecommunications Cable Systems Easement Deed, and notice thereof. The deed or certificate of title presented by the Class Member under Section II.B above, to show ownership of a Qualifying Parcel, shall be attached to each recorded Telecommunications Cable System Easement Deed. The categories of information included in Exhibit 1 to the Easement Deed by Court Order in Settlement of Landowner Action shall be included in an attachment to any recorded Claims Administrator Telecommunications Cable System Easement Deed that the Claims Administrator executes on behalf of a Class Member and to each recorded Easement Deed by Court Order in Settlement of Landowner Action. For a Claims Administrator Telecommunications Cable System Easement Deed that the Claims Administrator executes on behalf of Class Members, the information

attached shall pertain to those Class Members and those Class Members' Covered Property. For an Easement Deed by Court Order in Settlement of Landowner Action, the information attached shall pertain to each Class Member in the county or jurisdiction where the recording occurs. Notwithstanding the foregoing, however, (1) if a Settling Defendant is prohibited by local filing and recording requirements, practices, and preferences from attaching any of the specified information, it may record the easement and shall include as much of the specified information as is permitted and whatever additional information is required and (2) if any category of information is not found in Exhibit 1 to the Easement Deed by Court Order in Settlement of Landowner Action or is not included in the Database of Identification Information, it may be omitted from the attachment to the recorded easement.

3. The Easement Deed by Court Order in Settlement of Landowner Action, any Claims Administrator Telecommunications Cable System Easement Deed, and any executed Telecommunications Cable System Easement Deed shall not be binding upon the Right-of-Way Providers and do not address and shall not affect any real property rights, including the priority of interests, between the Grantor and any Right of Way Provider or between the Grantee and any Right of Way Provider.

V. Settlement Administration

A. Claims Administrator

1. The Claims Administrator shall establish, conduct and manage the claims administration process, hire its own employees, and agree in writing that it shall be subject to the jurisdiction of the Court, for purposes of supervising its administration of this Settlement Agreement. Subject to approval of the Settling Defendants, the Claims Administrator shall have the authority to contract with others and to appoint such agents as may be necessary to carry out its responsibilities as Claims Administrator, provided that, if the Claims Administrator contracts with others or appoints agents in connection with issuance of the Court Notice or Summary Notice, it shall obtain the prior approval of Settlement Class Counsel. Promptly following the execution of any contract with others to carry out its responsibilities, the Claims Administrator shall notify Settlement Class Counsel and, upon request, provide Settlement Class Counsel with a copy of the contract. The Claims Administrator shall carry out its responsibilities in the most economical and cost-effective manner consistent with this Agreement, and shall consult with the Settling Defendants and Settlement Class Counsel on a regular basis. Nothing in this paragraph or in any other provision of the Agreement shall be construed to affect the finality of the Claims Administrator's Claims decisions or to expand the right to seek reconsideration of those decisions, as provided in Section X.E below.

2. The Claims Administrator shall be responsible for communications to Class Members concerning settlement procedures and Claims, provided however, that Settlement Class Counsel may continue communications with Class Members who are Class Representatives or who have communicated directly with Settlement Class Counsel before the date of this Agreement, respond to inquiries from Class Members, and may initiate communications with any other Class Members upon prior Court approval.

3. The Claims Administrator shall process and tabulate requests for exclusion from the Settlement Class. The Claims Administrator shall report to the Settling Defendants and Settlement Class Counsel the number, names, and, if known, addresses of Class Members requesting exclusion from the Settlement Class, and the total linear feet of Right of Way on or adjacent to real property owned by them or in which they have or had an interest.

4. The Claims Administrator shall receive, process, classify, and review Class Members' Claims and shall pay Benefits to Qualified Claimants in accordance with the terms of this Agreement.

5. The Claims Administrator shall implement reasonable procedures designed to detect and prevent fraudulent Claims, and otherwise to assure reliability and quality control in the processing and payment of Claims.

6. The Claims Administrator shall maintain all appropriate records relating to the processing and payment of Claims and administrative expenses. Each Settling Defendant and Settlement Class Counsel shall be entitled to inspect Claims Administrator records at any time, upon reasonable notice. Settling Defendants shall be entitled to receive executed Releases of Claims for each Class Member to whom Benefits are paid, as well as a Telecommunications Cable System Easement Deed for each Current Landowner to whom Benefits are paid.

VI. Preliminary Approval

A. Preliminary Approval Order

1. At a time to be mutually agreed upon by all the Parties hereto, the Parties shall submit this Agreement to the Court for Preliminary Approval and shall move the Court for one or more orders that by their terms shall:

(a) appoint Dale Fager, Jr., Michele D. Fager, Gunter-Miller Enterprises, Ltd., and Wendell Hull as the representatives of the Settlement Class;

(b) appoint Settlement Class Counsel;

(c) appoint Rust Consulting, Inc. of Minneapolis, Minnesota as the Claims Administrator;

(d) provisionally certify the Settlement Class under Fed. R. Civ. P. 23(b)(3) and 23(e) and preliminarily approve this Agreement (together with Exhibits) for purposes of issuing Court Notice and Summary Notice of this Agreement to Class Members;

(e) schedule the Fairness Hearing;

(f) schedule the Opt-Out Deadline, Objection Deadline, and any other related dates and deadlines for inclusion in the Court Notice and Summary Notice; and

(g) approve the form and contents of the Court Notice and Summary Notice, find that they are the best practicable notice that can be given to members of the Settlement

Class, and provide that the Court Notice be mailed to the Persons who have been identified as current owners of Covered Property by Data Mapping Solutions, from the tax rolls and, where necessary, other real property records of each county in which a Designated Right of Way is located; and that Summary Notice be published in the manner ordered by the Court.

2. After submitting this Agreement to the Court for Preliminary Approval, the Parties shall cooperate, assist, and undertake all reasonable actions to accomplish the above on the schedule set by the Court.

3. In the event that the Court declines to enter a Preliminary Approval Order substantially in the form of Exhibit B or enters a preliminary approval order or orders that provide relief that is substantially different from that provided in Exhibit B, each of the Settling Defendants and the Settlement Class, through Settlement Class Counsel, shall have the right, within ten (10) days thereafter, to withdraw from this Agreement by written notice to counsel for all other Parties. The determination of whether any difference between the form of Preliminary Approval Order attached as Exhibit B and the preliminary approval order or orders entered by the Court is “substantial” shall be made by each Settling Defendant and the Class, through Settlement Class Counsel, each in its respective sole discretion. The consequences of such a withdrawal shall be as provided in Section IX.

VII. Certification of Settlement Class; Opt-Out Rights

A. Certification of Settlement Class

1. Subject to the Court’s approval, the Settlement Class shall be certified in the Action for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3) and 23(e), without prejudice to the Parties’ ability to contest, oppose, propose, or support class certification in the Action or any other action as to (a) any claims that are not Settlement Claims and (b) any Settlement Claims, in the event that this Agreement is not finally approved or the Order and Judgment does not become Final. Certification of the Settlement Class in the Preliminary Approval Order shall be for settlement purposes only. If this Agreement is not approved by the Court or for any reason does not become effective, the Settlement Class shall be decertified, all Parties’ rights to litigate all class issues will be restored to the same extent as if this Agreement had never been entered into, and no Party shall assert that another Party is estopped to take any position relating to class certification.

B. Opt-Out Rights

1. All Persons who would otherwise be encompassed by the definition of the Settlement Class shall have the right to exclude themselves (“opt out”) from it.

2. If one of the owners of a parcel of Covered Property excludes himself, herself, or itself from the Settlement Class, then all other Class Members who own or have owned the same parcel of Covered Property also are excluded from the Settlement Class, are not entitled to any payment under this Agreement, do not release claims or grant an easement, and are otherwise unaffected by the Settlement. Except as stated in this paragraph, all Persons encompassed by the

definition of the Settlement Class who do not exclude themselves on or before the Opt-Out Deadline shall remain Members of the Settlement Class.

3. If, in the reasonable discretion of any Settling Defendant, an excessive number of Persons opt out of the Settlement Class, each Settling Defendant shall have the right to withdraw from this Agreement at any time prior to the Fairness Hearing that is within thirty (30) days of the date upon which it is informed by the Claims Administrator, pursuant to Section V.A.3, of the number, names, and, if known, addresses of such Persons who have opted out of the Settlement Class, and the linear footage of Right of Way on or adjacent to real property owned by them or in which they have or had an interest.

VIII. Final Approval

A. Final Approval Order

1. This Agreement is subject to and conditional upon (1) entry by the Court of the Easement Deed by Court Order in Settlement of Landowner Action in the form of Exhibit K hereto and (2) the entry by the Court, following the Fairness Hearing, of an Order and Judgment substantially in the form of Exhibit E hereto, which grants final approval of this Agreement in accordance with Fed. R. Civ. P. 23(e), and provides, at a minimum, the below-specified relief, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Order and Judgment shall:

- (a) approve this Agreement in all respects;
- (b) provide for the Settlement Class Representatives to have and recover for themselves and other members of the Settlement Class the benefits described in this Agreement, subject to the conditions and limitations stated herein;
- (c) confirm the certification of the Settlement Class under Fed. R. Civ. P. 23(b)(3) and 23(e) solely for settlement purposes;
- (d) determine that this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
- (e) release the Settling Defendants and all other Released Parties from any and all Settlement Claims that any Class Member had, has, or may have in the future, against the Settling Defendants or any other Released Party;
- (f) dismiss the Action with prejudice and without costs;
- (g) bar and permanently enjoin all Class Members (and their successors in interest) from instituting, asserting, or prosecuting against a Settling Defendant or any other Released Party any and all Settlement Claims the Class Members have, had, or may have in the future, against a Settling Defendant or any other Released Party, except any claims for enforcement of this Agreement;

(h) direct all Class Members who are Current Landowners, regardless of whether they file a Claim, to execute and deliver a Telecommunications Cable System Easement Deed to the Claims Administrator in favor of each Settling Defendant whose Telecommunications Cable System was installed on Covered Property owned by the Class Member;

(i) appoint the Claims Administrator, pursuant to Fed. R. Civ. P. 70, as attorney in fact for each Class Member who is a Current Landowner and who submits a Claim but fails to deliver a Telecommunications Cable System Easement Deed, in the form of Exhibit H, and for each Class Member who is a Current Landowner and who does not file a Claim, and direct the Claims Administrator, at the request of a Settling Defendant to execute and deliver a Claims Administrator Telecommunications Cable System Easement Deed, in the form of Exhibit I hereto, to the applicable Settling Defendant and authorize it to record such Claims Administrator Telecommunications Cable System Easement Deed;

(j) declare that in order to receive Benefits each Current Landowner who submits a Qualified Claim must execute a Telecommunications Cable System Easement Deed;

(k) declare that each Settling Defendant or Settlement Class Counsel may, after the Effective Date, at their respective option and cost, file, record and/or index the Easement Deed by Court Order in Settlement of Landowner Action in the form of Exhibit K hereto or notice thereof, any Claims Administrator Telecommunications Cable System Easement Deed in the form of Exhibit J hereto or notice thereof, and any executed Telecommunications Cable System Easement Deed in the form of Exhibit H hereto, on behalf of any Class Member, in the judgment or land records of the county in which the real estate is located as provided in Section IV.C.2 above, and that the Court retains jurisdiction to enter supplemental orders and judgments to effectuate the recordation of the Easement Deed by Court Order in Settlement of Landowner Action, the Claims Administrator Telecommunications Cable System Easement Deed and the Telecommunications Cable System Easement Deeds;

(l) declare that the Released Parties are released by all Class Members from any and all claims, damages, costs, expenses, and other liabilities of every kind and nature whatsoever as a result of or in any way in connection with the filing, recordation, or indexing of the Easement Deed by Court Order in Settlement of Landowner Action, or notice thereof, or any Telecommunications Cable System Easement Deed;

(m) declare, adjudge, and decree that this Agreement provides the exclusive remedy for any and all Settlement Claims of Class Members (and any successors in interest) against the Settling Defendants and any and all other Released Parties; and

(n) reserve the Court's exclusive, general, and continuing jurisdiction over the Parties to this Agreement, including the Settling Defendants and all Class Members, as needed or appropriate in order to administer, supervise, implement, interpret, or enforce this Agreement in accordance with its terms, including the investment, conservation, protection of settlement funds prior to distribution, and distribution of settlement funds.

2. In the event that: (a) the Court enters any order or orders that decline to approve this Agreement; (b) the Court enters a final approval order or orders that provide relief that is substantially different from that provided in the form of Order and Judgment attached as Exhibit E; or (c) the final order of an appellate court modifies the final approval order or orders entered by the Court so that the relief provided is substantially different from that provided in the form of Order and Judgment attached as Exhibit E, each of the Settling Defendants and the Settlement Class, through Settlement Class Counsel, shall have the right, within ten (10) days of the entry of the order or orders, to withdraw from this Agreement by written notice to counsel for all other Parties. The right to withdraw shall arise upon the entry of any order described in Sections VIII.A.2(a) and (b) above without regard to whether the order become Final. The determination of whether any difference between the form of Order and Judgment attached as Exhibit E and the final approval order or orders entered by the Court or as modified on appeal is “substantial” shall be made by each Settling Defendant and the Class, through Settlement Class Counsel, each in its respective sole discretion. The consequences of such a withdrawal shall be as provided in Section IX.

IX. Effect of Withdrawal

In the event that all Settling Defendants or the Settlement Class, through Settlement Class Counsel, withdraw from this Agreement, this Agreement and all orders and judgments issued to implement it shall have no further force and effect. In the event that a Settling Defendant withdraws from this Agreement, all orders and judgments issued to implement it shall have no further force and effect as to that Settling Defendant, any Class Member who has a claim against that Settling Defendant, and any Person who would have been released or otherwise affected by that Settling Defendant’s Designation of Right of Way. Any Settling Defendant that withdraws from this Agreement shall be entitled to a return of all monies it deposited as to which a corresponding obligation to pay has not been incurred. In the event that the Settlement Class, through Settlement Class Counsel, withdraws from this Agreement, each Settling Defendant shall be entitled to a return of all monies it deposited for the Agreement as to which a corresponding obligation to pay has not been incurred.

X. Claims Processing

A. Generally

1. Promptly after the Order and Judgment with respect to this Agreement becomes Final, the Claims Administrator shall mail the Notice of Final Approval Package to Class Members to whom the Court Notice was mailed or who have requested a Notice of Final Approval Package.

2. To be eligible for Benefits under the Agreement, Class Members, including those who request a Notice of Final Approval Package after the mailing provided for in Section X.A.1, must submit, within one-hundred twenty (120) days of the date of mailing of Notice of Final Approval Packages, (a) an executed Claim Form and (b) the documents required by Section II.B above. Class Members who do not comply with these requirements by the Claim Deadline shall not be eligible for any Benefits under this Agreement, unless the Claims Administrator determines that the Class Member has demonstrated good cause for a reasonable extension of the

Claim Deadline. Following the submission of Claims, the claims process shall proceed as set forth below.

B. Claims Processing

1. The Claims Administrator shall process all Claims for Benefits and inform the Settling Defendants which of those Claims tentatively qualify for Benefits. Settling Defendants shall provide sufficient funding to enable the Claims Administrator to staff in a manner that permits the Claims Administrator to project that these determinations may be made within one-hundred twenty (120) days of the date by which Class Members must make their submissions under Section X.A.2 above.

2. A Settling Defendant shall have sixty (60) days from receipt of notice that a Class Member has submitted a tentatively Qualifying Claim to meet its burden of showing that no Benefits are attributable to the Segment to which the Claim applies, as provided in Section II.B.3 above.

3. Upon completion of the analysis of a Settling Defendant's submissions under Section X.B.2 above, the Claims Administrator shall notify the Settling Defendants and each Claimant who has submitted a Claim of the Claims Administrator's final determination as to whether the Claim is a Qualified Claim and the corresponding amount of Benefits payable with respect to such Claim. Settling Defendants shall provide sufficient funding to enable the Claims Administrator to staff in a manner that permits the Claims Administrator to project that these notices may be mailed within sixty (60) days of the date by which Settling Defendants must make their submissions under Section X.B.2 above. The notice to those Claimants with Qualified Claims shall include a Release of Claims and the notice to those Claimants with Qualified Claims who are Current Landowners also shall include a prepared Telecommunications Cable System Easement Deed, which documents must be executed by all Qualified Claimant co-owners and, if a Qualified Claimant is married, by his or her spouse, and returned to the Claims Administrator as a precondition to payment of Benefits.

4. For Claimants whose Claims are not Qualified Claims, the Claims Administrator's notice shall state the amount of Benefits that would be payable if the Claim were Qualified, the reason or reasons why the Claim did not Qualify and, if applicable, shall identify supplemental information that could be provided to support a request for reconsideration under Section X.E. The notice will also include a Release of Claims, and, if the Claimant is a Current Landowner, a prepared Telecommunications Cable System Easement Deed and instructions to submit executed originals of the Release of Claims and Telecommunications Cable System Easement Deed with any request for reconsideration.

5. For each Claim, after the Claim processing steps set forth in this Section X.B have been completed, the time for reconsideration under Section X.E below has run, and the Claims Administrator has decided any reconsideration requested, the Claims Administrator shall mail payment of the Benefits payable to any Qualified Claimant who, as set forth in Section X.C below, has timely submitted a properly executed Release of Claims, and, if required, a properly executed Telecommunications Cable System Easement Deed.

C. Releases and Easements

1. A Class Member who has been finally determined to have submitted a Qualified Claim must mail to the Claims Administrator, in an envelope postmarked within the time period set forth in this paragraph, a properly executed Release of Claims and, if the Class Member is a Current Landowner, a properly executed Telecommunications Cable System Easement Deed. The time period is within one-hundred twenty (120) days of receiving notice from the Claims Administrator of its final determination of the Class Member's Claim. The Claims Administrator shall pay a Qualified Claim only after receipt of timely submitted and properly executed Settlement Documents applicable to that Qualified Claim. The Claims Administrator shall provide a reasonable opportunity for Qualified Claimants to cure any deficiency in the execution of a Release of Claims or Telecommunications Cable System Easement Deed.

D. Presumption Regarding Competing Claims

1. The following presumption shall apply in the Claims Administrator's determinations regarding competing claims by an adjoining landowner and a non-adjoining landowner:

It shall be presumed that a Class Member who submits a Qualified Claim, determined by the Claims Administrator to be based on fee ownership of real property adjacent to a Right of Way on the Cable Side, owns any and all interests in the Right of Way on the Cable Side that are not owned by the Right-of-Way Provider, and such presumption may be rebutted only by another Class Member's submission of documents sufficient on their face to show that such Class Member has an interest in the Right of Way on the Cable Side that is superior to that of the Class Member owning the real property adjacent to the Right of Way on the Cable Side. The documentation required to rebut the presumption shall consist of (a) for a Class Member who does not own real property adjacent to the Right of Way, (i) a deed by which the Class Member or that Class Member's predecessor in title conveyed that real property and expressly retained title to the real property underlying the Right of Way and (ii) each document in the chains of title and descent to demonstrate that title to the real property underlying the Right of Way has been transferred to the Class Member; and (b) for a Class Member who owns real property adjacent to the Right of Way but not on the Cable Side, (i) a deed by which the Class Member or the Class Member's predecessor in title obtained title to the real property underlying the entire Right of Way and (ii) each document in the chain of title to demonstrate that title to the real property underlying the entire Right of Way has been transferred to the Class Member.

2. The foregoing presumption is for settlement purposes only, is designed to make claims processing workable and expeditious, and as with other rules and procedures set forth in this Agreement shall not constitute an admission or support any inference that its operation would be appropriate in any other context. Determinations made under this Agreement concerning construction of instruments of conveyance are made only for purposes of allocating Benefits under this Agreement and shall have no effect in any other context, dispute, controversy, proceeding, or action that involves the title of the Right-of-Way Provider.

E. Reconsideration of Claims Administrator's Decisions

Within thirty (30) days of receiving notice from the Claims Administrator of its final determination of a Claim, the Claimant or a Settling Defendant may seek reconsideration of the Claims Administrator's determination by submitting to the Claims Administrator a written response and, if applicable, any supplemental information identified in Section X.B.4 above. Upon receipt, the Claims Administrator shall forward any such response, and, if applicable, any supplemental information, to Settlement Class Counsel and the Settling Defendants. The Claims Administrator shall then review the determination based upon: (1) the information submitted to the Claims Administrator with the Class Member's claim; (2) any documentation or other information submitted by the Claimant or a Settling Defendant under Section X.B.4 above; and (3) any statement submitted by Settlement Class Counsel or any affected Settling Defendant. The Claims Administrator shall, as soon as practical after receipt of the aforementioned information and statements, advise the Claimant, Settlement Class Counsel, and the Settling Defendants of the result of its review of the Claim. The decision of the Claims Administrator shall be final. No further objection may be asserted, no appeal may be taken, and no other request for review may be made to the Claims Administrator, to the Court, or in any other forum.

XI. Exclusive Remedy; Dismissal of Action; Jurisdiction of Court

A. Exclusive Remedy

This Agreement shall provide the exclusive remedy for any and all Settlement Claims of Class Members and for any claims arising out of the subject matter of this Agreement by any Class Member against the Settling Defendants and any and all other Released Parties. No Released Party shall be subject to liability or expense of any kind to any Class Member with respect to any Settlement Claim, except as provided herein. Upon the Effective Date, each and every Class Member shall be forever barred and enjoined from initiating, asserting, or prosecuting any Settlement Claim against the Settling Defendants or any and all other Released Parties, provided, however, that Class Members and the Settling Defendants shall retain the right to enforce the terms of any Telecommunications Cable System Easement Deed granted hereunder. Nothing in this paragraph shall affect a Class Member's retention of rights under this Agreement or otherwise, against a Settling Defendant that is in violation of its obligations under this Agreement, as provided under Section III.A.3.

B. Dismissal of Action

The Parties shall take all necessary and appropriate steps to obtain, upon the Effective Date, the dismissal with prejudice of all Settlement Claims in the Action and in any other pending action in which Settlement Claims have been asserted by any Class Members who have not excluded themselves from the Class.

C. Continuing Jurisdiction of Court

The Court shall retain exclusive and continuing jurisdiction over all Class Members who have not elected to be excluded from the Class, and all Parties named or described in this Agreement to interpret, enforce, and implement the Agreement's terms, conditions, and obligations.

XII. Representations and Warranties

A. Generally

1. Plaintiffs' Counsel represent and warrant that they have the authority to enter into this Agreement on behalf of the Named Plaintiffs, subject to Court approval. This Agreement has been duly and validly executed and delivered by Plaintiffs' Counsel, and, subject to Court approval, constitutes a legal, valid, and binding obligation of the Settlement Class.

2. Each Settling Defendant represents and warrants that it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated thereby; the execution, delivery, and performance by the Settling Defendant of this Agreement and the consummation by the Settling Defendant of the transactions contemplated therein have been duly authorized by all necessary corporate action; and that this Agreement has been duly and validly executed and delivered by the Settling Defendant, and, subject to Court approval, constitutes its legal, valid, and binding obligation.

3. Each of the Settling Defendants warrants and represents that it has engaged in reasonable efforts to Designate for inclusion under this Agreement all Rights of Way that contain fiber-optic cable owned by it at any time prior to Preliminary Approval.

XIII. Miscellaneous Provisions

A. Generally

1. Neither this Agreement, approved or not approved, nor any exhibit, document, Telecommunications Cable System Easement Deed, or instrument delivered thereunder, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement (including determinations by the Claims Administrator) is intended to be or shall be construed as or deemed to be evidence of an admission or concession by a Settling Defendant or any other Released Party of any liability or wrongdoing, or of the truth of any allegations in the Class Complaint or any other complaint, or of the appropriateness of class certification in any other context. No such document, statement, determination, or other matter shall be admissible in evidence for such purpose or for the purpose of estoppel in this or any other proceeding, or shall be useable as legal precedent in any proceeding. Nothing in this Agreement shall be construed to prevent a Released Party from using the Agreement and the Releases and Easements granted under its terms as a defense to the assertion of any Settlement Claims by any Class Member who is not excluded from the Settlement Class or to prevent a Class Member from using the Agreement in connection with enforcement of a Class Member's rights under this Agreement or otherwise as provided under Section III.A.3.

2. The fact of entering into or taking any steps to implement this Agreement, any Telecommunications Cable System Easement Deed, any exhibits thereto, and any negotiations and proceedings related thereto, shall not be construed as, offered into evidence as, or deemed to be evidence of, an admission or concession of liability by or an estoppel against any Party or any Released Party, a waiver of any applicable statute of limitations or repose, and shall not be offered or received into evidence, or considered, in any action or proceeding against any Party or any Released Party in any judicial, quasi-judicial, administrative agency, regulatory or self-

regulatory organization, or other tribunal, or proceeding for any purpose whatsoever, other than to enforce the provisions of this Agreement or the provisions of any Telecommunications Cable System Easement Deed, Release of Claims, or Exhibit hereto, or in order to support a defense of res judicata, collateral estoppel, or release.

3. Nothing in this Agreement shall be construed to bar, release, or otherwise affect any claims and/or rights a Settling Defendant may have against a Right-of-Way Provider, insurer, or other third-party, *inter alia*, for contribution, indemnification, or insurance benefits; and the Settling Defendants specifically reserve all claims against and rights vis-à-vis such Persons.

4. Subject only to Section X.E, Claims Administrator determinations as to Claim qualification, as well as the provisions contained in the Easement Deed by Court Order in Settlement of Landowner Action and in any Telecommunications Cable System Easement Deeds executed pursuant to this Agreement, shall be final and binding upon the Settling Defendants, the Class Members, and their successors in interest vis-à-vis one another in all actions relating to the Class Complaint or to the claims resolved and rights created by this Agreement, but not upon other persons or entities not parties to this Agreement, including Right-of-Way Providers.

5. This Agreement, including all Exhibits attached hereto and thereto, constitute the entire agreement by and among the Parties with regard to the subject matter of this Agreement, and shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by all Parties hereto.

6. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity, other than CenturyLink, Level 3, WilTel, the Released Parties, the Class Representatives, the Settlement Class, and Class Counsel, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

8. Any notice, request, instruction, or other document to be given by any Party to any other Party (other than class notification) shall be in writing and delivered by messenger or an overnight delivery service as follows:

If to Settling Defendants:

Level 3 or WilTel:
Level 3 Communications, L.L.C.
Attention: General Counsel
1025 Eldorado Boulevard
Broomfield, CO 80021

CenturyLink:
CenturyLink Communications, LLC
c/o General Counsel
CenturyLink, Inc.
100 CenturyLink Drive
Monroe, Louisiana 71203-2041

and

Christopher J. Koenigs
Sherman & Howard
633 Seventeenth Street, Suite 3000
Denver, CO 80202

and

Joseph E. Jones
Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102

If to Class Representatives and/or Settlement Class Counsel: to the person or persons appointed by the Court as Settlement Class Counsel.

9. All applications for Court approval or Court orders required under this Agreement shall be made on notice to all Parties hereto.

10. Whenever the last day to perform any action under this Agreement is a Saturday, Sunday, or legal holiday, the action may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

XIV. Termination of Agreement

This Agreement shall be automatically terminated, without notice, (A) if (1) the Court enters any order by which it declines to enter an Order and Judgment and (2) that order becomes Final or (B) if an appellate court enters an order that precludes the Order and Judgment as described in Section VIII from becoming Final. In the event of termination, all Parties shall be restored to their respective positions immediately prior to execution of this Agreement.

Dated: October 21, 2014

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