Document 2013 3397

Book 2013 Page 3397 Type 06 001 Pages 12 Date 11/08/2013 Time 10:43 AM

Rec Amt \$62.00

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LISA SMITH, COUNTY RECORDER MADISON COUNTY 10WA

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## EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION

Recorder's Cover Sheet

Preparer Information: (name, address and phone number) Antonio Colacino, Nyemaster Goode, P.C., 700 Walnut Street, Suite 1600, Des Moines, Iowa 50309 (515) 283-8171

Taxpayer Information: (name and complete address)

No change for tax bills. Tax address for Grantee: Same as below.

✓ Return Document To: (name and complete address)

Antonio Colacino, Nyemaster Goode, P.C., 700 Walnut Street, Suite 1600, Des Moines, Iowa 50309

Grantors: As identified in the attached Exhibit 1 that begins on page 11.

#### **Grantees:**

Qwest as defined in the "Settlement Agreement" referenced in this Easement Deed. That Settlement Agreement defines "Qwest" to include (1) Qwest Communications International Inc.; (2) Qwest Communications Corporation, now known as Qwest Communications Company, LLC, and (3) all of these entities' predecessors, successors, assigns, parents, affiliates and subsidiaries.

Address for Grantee:

Qwest Communications Company, LLC 700 West Mineral Avenue Littleton, CO 80120 Attn: Jack Shives, ROW Manager

tun. Juok Binvos, Ro W Williago

Legal Description: See Page 11 and thereafter for property identification.

### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION: DES MOINES

MERRILL EUGENE FLYNN and BEVERLY	)	Civil Action No. 4:11-cv-00572-RP-TJS
COLLINS, for themselves and all others similarly	)	
situated,	)	ECF VIIO
	)	CERTIFICATION
Plaintiffs,	)	I DO HEREBY ATTEST AND CERTIFY THIS S
,	Ś	A TRUE AND FULL COPY OF A DOCUMENT
	′	WHICH IS PART OF THE ELECTRONIC CASE
VS.	)	FILE MAINTAINED BY THE U.S. DISTRICT COURT.
SPRINT COMMUNICATIONS COMPANY	)	DATE: 10/17/13
L.P. and QWEST COMMUNICATIONS	΄.	MARJORIE E/KRAHN, ČDERK
•	′	BY: JAMO BOOK
COMPANY, LLC,	)	
Defendants.	)	DEPUTY CLERK SOU

### EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION

WHEREAS, the parties to the above-captioned class action (the "Action") entered into an Iowa Class Settlement Agreement, as of March 7, 2012, (the "Settlement Agreement") (terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement); and

WHEREAS, on December 7, 2012, the Court entered a final Order and Judgment approving the Settlement Agreement and ordering that this Action may be settled as a class action on behalf of the following class:

A class (the "Settlement Class") defined as:

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.

Members of this Class are referred to below as Class Members;

WHEREAS, the Settlement Agreement provides for the entry of an Easement Deed by Court Order in Settlement of Landowner Action by which the Settling Defendants acquire, to the extent that Class Members have the right to transfer it, a permanent telecommunications easement in the Right of Way adjacent to the property of each Class Member;

### THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

- 1. To the extent that each Class Member owns rights in the Easement Premises (as hereafter defined), the Class Member (the "Grantor") hereby grants to whichever of Sprint Communications Company L.P. and Qwest Communications Company, LLC has Designated for inclusion under a Settlement Agreement the Right of Way which adjoins, underlies or includes Covered Property owned by the Class Member, together with its successors, assigns, and licensees (the "Grantee"), a permanent telecommunications easement in the Easement Premises. For each county in which this Easement Deed by Court Order in Settlement of Landowner Action is being recorded, a list of affected Class Members and their affected parcels is attached as Exhibit 1. Exhibit 1 shall describe Class Members' affected parcels with the following information, to the extent that it is in the Database of Identification Information: owner name; owner mailing address; tax map identification number; tax parcel identification number; lot number; and section, township, and range. Exhibit 1 may describe Class Members' affected parcels with any other available information.
- 2. The terms and conditions of the permanent telecommunications easement that is the subject of this Easement Deed by Court Order in Settlement of Landowner Action are:

a perpetual easement and right of way (hereinafter, together with the rights and privileges herein granted, the "Easement") and right to place, lay, bury, construct, install, operate, repair, maintain (including aerial patrol), renew, rebuild, replace, upgrade, expand, relocate, and remove

fiber optic cables, copper cables, coaxial cables or other cables through which voice, data, video or other signals are transmitted, conduits, inner ducts, hand holes, splice vaults, poles, optical or electronic equipment, regenerator huts, marker posts or signs, and other related facilities appropriate for installation, use, or maintenance of such cables (collectively, the "Telecommunications Cable System"), in, on, over, under, through and/or across the Easement Premises. The Easement Premises means all that real property that (a) either (i) is included within a parcel of property that is described in Exhibit 1 or (ii) has a common boundary with a parcel of property described in Exhibit 1 (the "Grantor's Property") (for purposes of this Telecommunications Cable System Easement Deed, a parcel of property shall be deemed to have a common boundary with the Easement Premises if it is separated by a non-navigable river or a street, road, or highway, other than a numbered state or federal highway) and that (b) (i) is or was used as a railroad right of way ("Railroad Right of Way") and (ii) is on a side of the centerline of the Railroad Right of Way that is next to the Grantor's Property (the "Grantor Side"), and (iii) extends no more than ten (10) feet on each side of the Grantee's Telecommunications Cable System (A) as it existed on June 8, 2012 (B) where the actively used components of the Grantee's Telecommunications Cable System are moved or placed, provided, however, that only a single 20-foot easement per moved component may exist at any point in time in the Easement Premises, and the width of the moved component's Easement Premises shall be reduced on one side and increased by an equal linear footage on the other side wherever necessary in order that it shall in all places remain solely within the limits of a single Grantor Side of the Railroad Right of Way, and (C) where new components are installed to connect the existing Telecommunications Cable System to the edge of the Right of Way. The Easement

shall be construed to grant Grantee all rights necessary to abandon in place unused components of Grantee's Telecommunications Cable System.

The Easement shall not include the right to construct on the Easement Premises regenerator huts and similar structures ("Buildings") in addition to those existing on June 8, 2012. The Easement shall include the rights to repair, replace, and expand existing Buildings, provided, however, that no such repair, replacement, or expansion shall increase the site that the Buildings occupy, or the height of any Building, by more than twenty-five percent. The Easement does not permit the construction of microwave towers, cell towers, or other components of a primarily aboveground statewide Telecommunications Cable System.

The Easement includes the right to temporarily use the entire Grantor Side of the Railroad Right of Way for construction or maintenance, so long as Grantee uses its best efforts not to interfere with any real property which, although within the boundaries of the Easement Premises, is actually being used by Grantor; provided, however, that in no event shall Grantee be prohibited from using such real property if it is commercially reasonable to do so under the circumstances or if Grantee's Telecommunications Cable System is currently located within such area. The Easement shall include the right of reasonable ingress and egress to and from the Easement Premises over that portion of the Grantor's real property that underlies the Railroad Right of Way and, for repair and maintenance, over any existing private roads of Grantor, where access from public or railroad roads is not reasonably practical, provided Grantee has made commercially reasonable efforts to give prior notice to Grantor of Grantee's use of Grantor's private roads. Grantee shall not be liable for damages caused by its removal of trees, undergrowth, and brush within the Easement Premises necessary or appropriate for the enjoyment of the Easement. Nothing contained herein shall constitute a waiver of any right that

Grantor may have for any damages to Grantor's property outside of the Easement Premises caused by Grantee's action. If Grantee's action causes damage to any of Grantor's existing improvements, including houses, garages, shops, sheds, and fences, or growing crops, which are within the Easement Premises, Grantee shall pay reasonable compensation to the Grantor for such damage to the extent provided by law.

From and after December  $\frac{1}{2}$ , 2012, subject to all the restrictions and limitations stated herein, the Easement includes the right to construct and install additional components of a Telecommunications Cable System within the Easement Premises. Grantee agrees that, unless (a) it is required to do so by the railroad or other owner of Railroad Right of Way or (b) it is commercially reasonable under the circumstances to do so, it will not install additional components of a Telecommunications Cable System in the area of the Easement Premises that is outside a parallel fence constructed by the railroad or other owner of Railroad Right of Way or is actually being used by the Grantor or its successor, provided, however, that the foregoing shall not be binding upon Grantee if Grantee's Telecommunications Cable System is currently located within such area. If Grantee's action causes damage to any of Grantor's existing improvements, including houses, garages, shops, sheds, and fences, or growing crops, which are within the Easement Premises, Grantee shall pay reasonable compensation to the Grantor for such damage to the extent provided by law.

The Easement includes all rights necessary to the lawful occupation of the Easement Premises by an existing Telecommunications Cable System, and by any additional Telecommunications Cable System that is constructed and installed by or on behalf of Grantee in the Easement Premises and that is owned or operated by either (a) Grantee or (b) any person or entity to which Grantee sold, granted, leased, or otherwise transferred or may hereafter sell,

grant, lease, assign, or otherwise transfer, all or any part of the rights in or use of such Telecommunications Cable System.

The Easement, however, does not apply to any Telecommunications Cable System that existed on June 8, 2012, but that was acquired by Grantee after that date (unless such Telecommunications Cable System or component thereof was acquired from any of Sprint Communications Company L.P.; Qwest Communications Company, LLC, f/k/a Qwest Communications Corporation; Level 3 Communications, LLC, Level 3 Communications, Inc., and Level 3 Telecom Holdings, Inc.; WilTel Communications, Inc.; WilTel Communications, LLC; and Williams Communications, LLC, f/k/a Williams Communications, Inc., f/k/a Vyvx, Inc.).

No oil, gas, or other mineral rights are granted and no existing oil, gas, or other mineral rights are expanded, limited, or affected by this instrument, provided, however, that Grantor shall not use a method of extraction that interferes with or impairs in any way the Easement, the Telecommunications Cable System, or the exercise of Grantee's rights herein.

Grantor shall not, nor shall Grantor authorize others to, construct or create any road, reservoir, excavation, obstruction, structure, or building or change the land grade on, in, over, under, through, or across the Easement Premises without the prior written consent of Grantee, provided that nothing herein shall be construed to affect the rights and obligations of any railroad with respect to the use, improvement, or alteration of its Railroad Right of Way, as provided in any agreement between the railroad and the Grantee, by applicable law, or otherwise.

It is understood and agreed that the Easement is not exclusive and is subject to all preexisting uses and pre-existing rights to use the Easement Premises, whether such uses are by Grantor or others and whether for surface uses, crossings, or encroachments by communication companies or utilities. It is further understood and agreed that Grantor retains all of its existing rights, if any, to grant, convey, assign, and restrict any and all rights (including future rights and uses) on the Easement Premises, provided, however, and notwithstanding the foregoing, that Grantor shall not use or authorize others to use the Easement Premises in a manner that interferes with or impairs in any way Grantee's Telecommunications Cable System or the exercise by Grantee of the rights granted herein.

Subject to the terms hereof, Grantee shall have all other rights and benefits necessary or useful to the full and complete enjoyment and use of the Easement for the purposes stated herein, including the right to sell, grant, lease, or otherwise transfer all or any part of the rights in or use of the Telecommunications Cable System.

Grantor conveys the Easement without warranty of title to any property interest in the Easement Premises. This instrument does not address and shall not affect any real property rights, including the priority of interests, between Grantor and any railroad or between Grantee and any railroad, or any of their predecessors, successors, past or present predecessors in interest, successors in interest, successors in title, members, partners, parents, subsidiaries, affiliates, lessees, assigns, and past, current, or future licensees or assignees. This Easement is not intended to impact or diminish any railroad's existing rights or property interests in the Right of Way. This Easement shall not be construed to permit Grantee to interfere with railroad operations. This Easement also shall not permit any component of a Telecommunications Cable System to remain in a Railroad Right of Way except (a) under existing or future agreements with the railroad or (b) in any Railroad Right of Way in which no railroad operates and no railroad retains any right, title, or interest. This Easement also shall not permit any new components to be installed to connect the existing Telecommunications Cable System to the edge of the Right

of Way in any Railroad Right of Way as to which the Interstate Commerce Commission or the Surface Transportation Board has entered an order, pursuant to 49 U.S.C. § 10903, that the railroad is authorized to cease to provide or maintain rail service over that right of way and the railroad no longer provides or maintains rail service over that line, provided that if the railroad does not cease such rail service or later reactivates such service, then this limitation shall not apply.

This Telecommunications Cable System Easement Deed is executed and delivered on behalf of Grantor for the purpose of granting the Easement to Grantee in, on, over, under, through and/or across the Easement Premises to the full extent of Grantor's right, title or interest, if any, in or to the Easement Premises, and the Easement granted hereby shall affect the Easement Premises only to the extent of Grantor's right, title, and interest therein. Grantor and Grantee agree that this Telecommunications Cable System Easement Deed shall not grant any rights to the Easement Premises, or any portion thereof, in which Grantor holds no right, title or interest.

No rights reserved to Grantor herein shall be deemed to expand rights reserved to Grantor under any other easement, right of way, license, lease, or any similar instrument or court order. No limitation herein on the rights of Grantee shall be deemed to limit rights heretofore granted by Grantor or its predecessors in interest under any other easement, right of way, license, lease, or any similar instrument or court order.

The terms and provisions of this instrument shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Settling Defendants, the Grantor, their successors, assigns, personal representatives, and heirs.

This instrument fully sets forth the terms and conditions of the Easement. There are no oral or other written agreements between Grantor and Grantee that modify, alter, or amend this instrument.

TO HAVE AND TO HOLD the Easement, rights and privileges unto Grantee, its successors and assigns in perpetuity or until such time as Grantee shall cause the Easement to be released of record.

3. Settling Defendants may record this Easement under the terms and conditions set forth in the Settlement Agreements.

Date:

Honorable Ronald E. Longs

United States District Judge

Grantee's Name: Owest, as defined in the "Settlement Agreement" referenced in this easement. That Settlement Agreement defines "Owest" to include (1) Owest Communications International Inc. (2) Owest Communications Corporation, now known as Owest Communications Company, LLC, and (3) all of these entities' predecessors, successors, assigns, parents, affiliates and subsidiaries.

Address for Grantee: Owest Communications Company, LLC, 700 West Mineral Avenue, Littleton, CO 80120, Attn: Jack Shives, ROW Manager

Tax Address for Grantee: Same as above.

# **EXHIBIT 1**

THE REAL PROPERTIES WHICH ARE SUBJECT TO THE FOREGOING EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION AND THE OWNERS THEREOF INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING NAMED PARTIES AND PARCELS, WHICH ARE IDENTIFIED BY REFERENCE TO THE PARCEL IDENTIFICATION NUMBERS ESTABLISHED BY THE MADISON COUNTY, IOWA TAX ASSESSOR'S OFFICE

\*Owners/Grantors Mailing Address Information (not necessarily the address of the subject parcels)

Township, Range, Section	Assessment #	Grantor's Last Name	Grantor's First Name	City	ST ZIP	County	State
	00000102400003	Marker	Steven C & Marty	Earlham	IA 50072	72 Madison	4
	00000202100008	JSC Farms Inc		Des Moines	IA 50309	9 Madison	4
	00000202100005	JSC Properties Inc		Des Moines	IA 50309	_	۷.
_	0000020200001	JSC Farms Inc		Des Moines	IA 50309	9 Madison	۲
0	00000202300006	JSC Properties Inc		Des Moines	IA 50309	9 Madison	4
0	200000201501001	JSC Properties Inc		Des Moines	IA 50309	_	۲
Ō	000000101432004	Speedling	Gary E & Sandra R	Eartham	IA 50072	72 Madison	Α.
0	000000102400004	Stiles	Daniel L Jr & Marcie D	Earlham	IA 50072	72 Madison	4
ŏ	00000101300006	Godby	John F	West Des Moines	IA 50266	6 Madison	4
8	00000203200007	JSC Properties Inc		Des Moines	IA 50309	9 Madison	۲
Š	00000101477010	Mayhugh	Rex L & Cindi L	Eartham	IA 50072		۲
Š	00000102100003	Farmers Co-Op Co-Farnhamville		Earlham	IA 50072	'2 Madison	∠
8	000000206382010	Marsh	Stanley C	Earlham	IA 50072	'2 Madison	۲
8	00000102300003	Devries	Byron C & Beth Ann	Earlham	IA 50072	'2 Madison	۲
ö	000000102400005	Devries	Byron C & Beth Ann	Earlham	IA 50072	'2 Madison	۲
8	00000101300005	Frommelt	William L & Pamela L	Earlham	IA 50072	'2 Madison	٨
8	000000101300002	Godby	John F	West Des Moines	IA 50266		∠
ಶ	000000101401001	Godby	Jan B	West Des Moines	IA 50266	6 Madison	۲.
8	000000101476002	Menke	Joseph E & Carol S	Eartham	IA 50072	'2 Madison	⊻ د
ŏ	000000101476003	Gulling	Holly M	Earlham	IA 50072	'2 Madison	۲
$\circ$	000000101476004	Golightly	Michael R	Earlham	IA 50072	'2 Madison	۲
0	000000101476005	Biondi	Christopher G	Earlham	IA 50072	'2 Madison	4
8	000000101477001	Haugen	Lynne M	Earlham	IA 50072	2 Madison	۲

Assessor Map	Assessor Parcel #	Township, Range, Section	Assessment #	Grantor's Last Name	Grantor's First Name	City	ST ZIP	County		State
01-01H	01-01-477-002	77N-29W-1	000000101477002	Babcock	Jeremy E & Karmyn E	Earlham	IA 50072	72 Madison	yu IA	
01-01H	850 850000401041000 00	77N-29W-1	000000101477011	Warburton	Janet M	Earlham	IA 50072	72 Madison	_	
01-D	01-03-100-002	77N-29W-3	000000103100002	James A Ross Tr		Earlham	IA 50072	72 Madison	N IA	
02-06E	850 850000107000000 00	77N-28W-6	000000206357003	Farmers Cooperative Co Farnhamville		Farnhamville	IA 50538	38 Madison	Al no	
02-06E	02-06-355-001	77N-28W-6	000000206355001	Rolling Hills F S Inc		Earlham	IA 50072	72 Madison	on IA	
02-06E	02-06-355-002	77N-28W-6	000000206355002	LPB Inc		Earlham	IA 50072	72 Madison	on IA	
02-06E	02-06-356-002	77N-28W-6	000000206356002	Harris & Sons Constr Co Inc		Earlham	IA 50072	72 Madison	Ai no	
02-06E	02-06-356-012	77N-28W-6	000000206356012	Rhodes	Rex D & Linda	Earlham	IA 50072	72 Madison	on IA	
01-D	01-03-100-006	77N-29W-3	00000103100006	Crabbs	Verne & Elaine E	Earlham	IA 50072	72 Madison	Al no	
02-06F	02-06-382-012	77N-28W-6	000000206382012	Jones	Gregory S & Deborah K	Earlham	IA 50072	72 Madison	on IA	
02-06F	02-06-382-004	77N-28W-6	000000206382004	Marsh	Stanley C	Earlham	IA 50072	72 Madison	Al no	
02-06F	02-06-380-011	77N-28W-6	000000206380011	Pritchard	David & Glee	Earlham	IA 50072	72 Madison	N IA	
02-06F	02-06-380-010	77N-28W-6	000000206380010	Grimes	Richard F & Nikki L	Earlham	IA 50072	72 Madison	A) uc	
02-06F	02-06-380-006	77N-28W-6	000000206380006	Hamilton	Ted & Donna	Earlham	IA 50072	72 Madison	Al no	
02-06F	02-06-380-005	77N-28W-6	000000206380005	Marsh	Stanley C	Earlham	IA 50072	72 Madison	N IA	
01-D	01-03-100-009	77N-29W-3	000000103100008	Crabbs	Verne & Elaine E	Earlham	IA 50072	72 Madison	A) no	
02-06F	02-06-379-016	77N-28W-6	000000206379016	Arnburg	Gary A & Sheryl F	Earlham	IA 50072	72 Madison	Al no	
02-06G	02-06-454-002	77N-28W-6	000000206454002	Schafer	Paul & Anne E	Earlham	IA 50072	72 Madison	Al no	
02-06G	02-06-454-003	77N-28W-6	000000206454003	Schafer	Paul & Anne E	Earlham	IA 50072	72 Madison	Al no	
01-D	250 250040326031000 00	77N-29W-3	000000103200008	Crabbs	Verne & Elaine E	Earlham	IA 50072	72 Madison	A no	
02-06H	02-06-454-003	77N-28W-6	N/A	Schafer	Paul & Anne E	Earlham	IA 50072	72 Madison	on IA	
02-06H	02-06-478-001	77N-28W-6	000000206478001	Thrailkill	David W & Connie J	Earlham	IA 50072	72 Madison	N I	
02-B	02-05-300-003	77N-28W-5	000000205300003	Thrailkill	David W	Earlham .	IA 50072	72 Madison	N TA	
02-B	02-05-300-007	77N-28W-5	000000205300007	Schirm	Jane E	Dexter	IA 50070	70 Madison	on IA	
02-8	02-05-400-002	77N-28W-5	000000205400002	Dailey	Cynthia A	Earlham	IA 50072	72 Madison	on IA	
01-D	01-03-200-004	77N-29W-3	000000103200004	James A Ross Tr		Earlham	IA 50072	72 Madison	N IA	
02-B	02-05-400-005	77N-28W-5	000000205400005	Mapes	Judy K	Earlham	IA 50072	72 Madison	N IA	
02-C	02-04-300-002	77N-28W-4	000000204300002	Radakovich	Steven K	Earlham		72 Madison	on IA	
02-C	02-04-300-006	77N-28W-4	000000204300006	Radakovich	Steven K	Earlham	IA 50072	72 Madison	N IA	
02-C	200 200030480010000 00	77N-28W-4	000000204400008	Martin Marietta Materials Inc		Fort Wayne	IN 46898	98 Madison	yn IA	
01-D	01-03-200-007	77N-29W-3	000000103200006	American Tower Management Inc		Earlham	IA 50072	72 Madison	N IA	
02-D	200 200030364030000 00	77N-28W-3	000000203300006	Jones	Howard E & Delores M	Earlham	IA 50072	72 Madison	N IA	
05-D	02-03-300-004	77N-28W-3	000000203300004	Jones	Howard E & Delores M	Earlham	IA 50072	72 Madison	N IA	
02-D	02-03-400-008	77N-28W-3	000000203400001	Tessmer	Isaac Gerhardt	Earlham	IA 50072	72 Madison	N IA	
02-D	02-03-400-002	77N-28W-3	000000203400002	JSC Properties Inc		Des Moines	IA 50309	09 Madison	ă Ā	
02-D	02-03-300-005	77N-28W-3	000000203300005	Radakovich	Steven K	Earlham	IA 50072	72 Madison	Z Z	
02-€	02-02-100-004	77N-28W-2	000000202100004	JSC Farms Inc		Des Moines	IA 50309	09 Madison	N IA	
02-E	02-02-200-002	77N-28W-2	0000020200000	JSC Farms Inc		Des Moines	IA 50309	09 Madison	ν. Σ	
02-E	02-02-200-004	77N-28W-2	MULTI-UNIT PARCEL	JSC Farms Inc		Des Moines	IA 50309	09 Madison	N K	
02-E	02-02-100-010	77N-28W-2	000000202100010	JSC Farms Inc		Des Moines	IA 50309	09 Madison	N A	