

## APPENDIX RECORDING

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**APPENDIX RECORDING  
(Recording, Message Processing And  
Provision Of Interexchange Carrier Transported  
Message Detail Appendix)**

**1. INTRODUCTION**

- 1.1 This Appendix sets forth the terms and conditions under which SBC-13STATE will provide recording, message processing and message detail services as described in **Exhibit I** and **Exhibit II**, Exhibits I and II are part of this Appendix by reference.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, SBC-13STATE, and means the applicable above listed ILECs doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, Ohio, Texas and Wisconsin.

**2. DEFINITIONS**

- 2.1 “**Access Usage Record (AUR)**” - a message record which contains the usage measurement reflecting the service feature group, duration and time of day for a message and is subsequently used to bill access to Interexchange Carriers (IXCs).
- 2.2 “**Assembly and Editing**” - the aggregation of recorded customer message details to create individual message records and the verification that all necessary information required ensuring all individual message records meet industry specifications is present.
- 2.3 “**Billing Company**” - the company that bills End Users for the charges incurred in originating and terminating IXC transported calls.
- 2.4 “**Billable Message**” - a message record containing details of a completed IXC transported call which is used to bill an end user.
- 2.5 “**Centralized Message Distribution System (CMDS)**” - the national network of private line facilities used to exchange Exchange Message Records (EMR) formatted billing data between SBC-13STATE and the Billing Company.

- 2.6 **"Data Transmission"** - the forwarding by SBC-13STATE of IXC transported toll message detail and/or access usage record detail in EMR format over data lines or on magnetic tapes to the appropriate Billing Company.
- 2.7 **"Exchange Message Record (EMR)"** - Industry standard message format as described in accordance with the Telcordia Practice BR010-200-010 developed for the interexchange of telecommunications message information.
- 2.8 **"Interexchange Carrier (IXC)"** - A third party transmission provider that carries long distance voice and non-voice traffic between user locations for a related recurring fee. IXCs provide service interstate and intrastate. In some states IXCs are permitted to operate within a LATA.
- 2.9 **"Interexchange Carrier Transported"** - telecommunications services provided by an IXC or traffic transported by facilities belonging to an IXC.
- 2.10 **"Local Access and Transport Area (LATA)"** - service areas defined in FCC Docket 78-72.
- 2.11 **"Message Processing"** - the creation of individual EMR formatted billable message detail records from individual recordings that reflect specific billing detail for use in billing the End User and/or access usage records from individual recordings that reflect the service feature group, duration and time of day for a message, Carrier Identification Code, among other fields, for use in billing access to the Interexchange Carriers. Message Processing includes performing CMDS online edits required to ensure message detail and access usage records are consistent with CMDS specifications.
- 2.12 **"Originating Local Exchange Carrier Company"** - the company whose local exchange telephone network is used to originate calls thereby providing originating exchange access to IXCs.
- 2.13 **"Provision of Message Detail"** - the sorting of all billable message detail and access usage record detail by Revenue Accounting Office, Operating Company Number or Service Bureau, splitting of data into packs for invoicing, and loading of data into files for data transmission to CLEC for those records created internally or received from other Local Exchange Carrier Companies or Interexchange Carriers through SBC-13STATE's internal network or national CMDS.
- 2.14 **"Record"** - a logical grouping of information as described in the programs that process information and create the magnetic tapes or data files.
- 2.15 **"Recording"** - the creation and storage on magnetic tape or other medium of the basic billing details of a message in Automatic Message Accounting (AMA) format.

- 2.16 **"Service Switching Point (SSP)"** - a signaling point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 2.17 **"Recording Company"** - the company that performs the functions of recording and message processing of Interexchange Carrier (IXC) transported messages and the provision of message detail.
- 2.18 **"Switching Control Point (SCP)"** - the real time database system that contains routing instructions for 800 calls. In addition to basic routing instructions, the SCP may also provide vertical feature translations, i.e., time of day, day of week routing, out of area screening and/or translation of the dialed 800 number to its assigned working telephone number.
- 2.19 **"800 SCP Carrier Access Usage Summary Record (SCP Record)"** - a summary record which contains information concerning the quantity and types of queries launched to an SBC-13STATE SCP. In those situations where charges are applicable for the production and delivery of SCP records, such charges will be those specified in **Exhibit II** pertaining to the production and forwarding of AUR data.
- 2.20 **"Terminating Local Exchange Carrier Company"** - the company whose local exchange telephone network is used to terminate calls thereby providing terminating exchange access to IXC's.

### 3. RESPONSIBILITIES OF THE PARTIES

- 3.1 SBC-13STATE will record all IXC transported messages for CLEC carried over all Feature Group Switched Access Services that are available to SBC-13STATE provided recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by SBC-13STATE -provided equipment or operators) will not be recorded. The recording equipment will be provided at locations selected by SBC-13STATE.
- 3.2 SBC-13STATE will perform assembly and editing, message processing and provision of applicable access usage record detail for IXC transported messages if the messages are recorded by SBC-13STATE.
- 3.3 SBC-13STATE will provide access usage records that are generated by SBC-13STATE.
- 3.4 Assembly and editing will be performed on all IXC transported messages recorded by SBC-13STATE, during the billing period established by SBC-13STATE and selected by CLEC.

- 3.5 Standard EMR record formats for the provision of billable message detail and access usage record detail will be established by SBC-13STATE and provided to CLEC.
- 3.6 Recorded billable message detail and access usage record detail will not be sorted to furnish detail by specific end users, by specific groups of end users, by office, by feature group or by location.
- 3.7 SBC-13STATE will provide message detail to CLEC in data files, via data lines (normally a File Transfer Protocol), utilizing an 800 dial up or the Internet to receive and deliver messages or a network data mover facility, using software and hardware acceptable to both parties.
- 3.8 In **Exhibit II**, CLEC will identify separately the location where the data transmissions should be sent (as applicable) and the number of times each month the information should be provided. SBC-13STATE reserves the right to limit the frequency of transmission to existing SBC-13STATE processing and work schedules, holidays, etc.
- 3.9 SBC-13STATE will determine the number data files required to provide the access usage record detail to CLEC.
- 3.10 Recorded billable message detail and/or access usage record detail previously provided CLEC and lost or destroyed through no fault of SBC-13STATE will not be recovered and made available to CLEC except on an individual case basis at a cost determined by SBC-13STATE.
- 3.11 When SBC-13STATE receives rated billable messages from an IXC or another Local Exchange Carrier (LEC) that are to be billed by CLEC, SBC-13STATE will forward those messages to CLEC.
- 3.12 SBC-13STATE will record the applicable detail necessary to generate access usage records and forward them to CLEC for its use in billing access to the IXC.

#### **4. BASIS OF COMPENSATION**

- 4.1 SBC-13STATE as the Recording Company, agrees to provide recording, assembly and editing, message processing and provision of message detail for Access Usage Records (AURs) ordered/required by the CLEC in accordance with this agreement on a reciprocal, no-charge basis. CLEC agrees to provide any and all Summary Usage Records (SURs) required by SBC-13STATE on a reciprocal, no-charge basis. The parties agree that this mutual exchange of records at no charge to either party shall otherwise be conducted according to the guidelines and specifications contained in the Multiple Exchange Carrier Access Billing (MECAB) document.

## 5. LIABILITY

- 5.1 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.
- 5.2 When SBC-13STATE is notified that, due to error or omission, incomplete data has been provided to the CLEC, SBC-13STATE will make reasonable efforts to locate and/or recover the data and provide it to the CLEC at no additional charge. Such requests to recover the data must be made within thirty (30) calendar days from the date the details initially were made available to the CLEC. If written notification is not received within thirty (30) calendar days, SBC-13STATE shall have no further obligation to recover the data and shall have no further liability to the CLEC.
- 5.3 If, despite timely notification by the CLEC, message detail is lost and unrecoverable as a direct result of SBC-13STATE having lost or damaged tapes or incurred system outages while performing recording, assembly and editing, rating, message processing, and/or transmission of message detail, SBC-13STATE will estimate the volume of lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, SBC-13STATE's liability to the CLEC shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.
- 5.4 SBC-13STATE will not be liable for any costs incurred by the CLEC when the CLEC is transmitting data files via data lines and a transmission failure results in the non-receipt of data by SBC-13STATE.
- 5.5 The CLEC agrees to defend, indemnify, and hold harmless SBC-13STATE from any and all losses, damages, or other liability, including attorney fees, that it may incur as a result of claims, demands, or other suits brought by any party that arise out of the use of this service by the CLEC, its customers or end users. The CLEC shall defend against all End Users' claims just as if the CLEC had provided such service to its End Users with its own employees.
- 5.6 The CLEC also agrees to release, defend, indemnify and hold harmless SBC-13STATE from any claim, demand or suit that asserts any infringement or invasion of privacy or confidentiality of any person(s), caused or claimed to be caused, directly or indirectly, by SBC-13STATE employees and equipment associated with provision of this service. This includes, but is not limited to suits arising from disclosure of any customer specific information associated with either the originating or terminating numbers used to provision this service.

- 5.7 The CLEC also agrees to release, defend, indemnify and hold harmless the Recording Company from any claim, demand or suit to perform under this contract should any regulatory body or any State or Federal Court find the existing terms of this contract to either be illegal, unenforceable, against public policy, or improper for the Recording Company.
- 5.8 SBC-13STATE makes no representations or warranties, express or implied, including but not limited to any warranty as to merchantability or fitness for intended or particular purpose with respect to services provided hereunder. Additionally, SBC-13STATE assumes no responsibility with regard to the correctness of the data supplied by CLEC when this data is accessed and used by a third party.

## 6. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 6.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.



**EXHIBIT I  
SERVICES**

The attached pages of this Exhibit show the service options that are offered under this Agreement.

**EXPLANATION OF SERVICE OPTIONS**

**ORIGINATING 1+ DDD RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL  
AND ACCESS USAGE RECORDS**

- Option #1:** This option has been withdrawn.
- Option #2:** The Recording Company performs recording, assembly and editing of the billable message detail and extracts that detail to the IXC for all 1+ IXC transported messages originating from the CLECCLEC end office. The Recording Company creates Access Usage Records for this traffic and forwards those AUR records to the CLEC.
- Option #3:** The Interexchange Carriers do own billable message recording for their 1+ IXC transported messages originating from the CLEC end office. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.

**ORIGINATING OPERATOR RECORDINGS - IXC TRANSPORTED MESSAGE  
DETAIL AND ACCESS USAGE RECORDS**

- Option #4:** CLEC Non-Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for all 0+, 0-, Coin Sent Paid, CAMA and International IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #5:** CLEC Equal Access End Office - The Interexchange Carriers do own billable message recording. The Recording Company performs local and intraLATA operator services for the CLEC. The Recording Company performs recording at the operator switch for 0- only IXC transported messages. The Recording Company assembles and edits this data, creates AURs and forwards the AUR records to the CLEC.
- Option #6:** This option has been withdrawn.
- Option #7:** This option has been withdrawn.
- 800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL**

- Option #8:** Recording Company performs SSP function for CLEC end office and bills query charge to the appropriate Interexchange Carrier. The Recording Company performs recording for Access purposes only, assembles and edits this data, creates AURs and forwards AUR records to CLEC.

**800 RECORDINGS - IXC TRANSPORTED MESSAGE DETAIL (Continued)**

- Option #9:** This option has been withdrawn.
- Option 10:** Recording Company performs SCP function for CLEC. The Recording Company performs recording at the SCP, assembles and edits this data, creates SCP records and forwards SCP records to the CLEC.

**TERMINATING RECORDINGS - IXC TRANSPORTED ACCESS USAGE RECORDS**

- Option 11:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B, Feature Group C and Feature Group D terminating usage recordings including Feature Group B over D and Feature Group C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option 12:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings excluding B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option 13:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group B terminating usage recordings including Feature Group B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option 14:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D and C over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.
- Option 15:** Recording Company provides tandem function for CLEC. The CLEC requests Recording Company to provide all Feature Group D terminating usage recordings including B over D. Recording Company creates terminating AURs for this data and forwards AUR records to the CLEC.

**MESSAGE PROVISIONING**

- Option 16:** The Recording Company will forward all IXC transported message detail records or access usage records to the CLEC generated internally within the Recording Company system or received via CMDS from an Interexchange Carrier or another Local Exchange Carrier telephone company. The CLEC forwards rated IXC transported message detail or access usage detail to Recording Company for distribution to the appropriate billing company through 13STATE's internal network or using the CMDS network.

Form SW-1773-I

**EXHIBIT II**

**INVOICE DESIGNATION**

Effective January 1, 1999

COMPANY NAME:

EXCHANGE COMPANY I.D. NUMBER (OCN):

BILLABLE INVOICE INTERVAL:

Check One:

☐ Daily (Full Status RAO Companies will receive billable messages daily.)

☐ Bill period (A maximum of five dates may be chosen.) A file is created five workdays from each bill period date, and three additional days should be allowed for distribution.  
Circle a maximum of five bill period dates:

1 3 5 7 9 11 13 15 17 19 21 23 25 27 29

Form SW-1733-III-B

AUR INVOICE INTERVAL:

Check One:

☐ Daily (Full Status RAO Companies will receive AURs daily.)

☐ Bill period (A maximum of five dates may be chosen.) A file is created five workdays from each bill period date, and three additional days should be allowed for distribution.  
Circle a maximum of five bill period dates:

1   3   5   7   9   11   13   15   17   19   21   23   25   27   29

## APPENDIX RESALE

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## APPENDIX RESALE

### 1. INTRODUCTION

- 1.1 This Appendix set forth terms and conditions for Resale Services provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company, and/or Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, SBC-13STATE means the applicable above listed ILEC doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.4 As used herein, SBC-AMERITECH means the applicable above listed ILEC doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.
- 1.5 As used herein, SBC-SWBT means the applicable above listed ILEC doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.6 As used herein, SWBT-AR means the applicable above listed ILEC doing business in Arkansas.
- 1.7 As used herein, SWBT-KS means the applicable above listed ILEC doing business in Kansas.
- 1.8 As used herein, SWBT-MO means the applicable above listed ILEC doing business in Missouri.
- 1.9 As used herein, SWBT-OK means the applicable above listed ILEC doing business in Oklahoma.
- 1.10 As used herein, SWBT-TX means the applicable above listed ILEC doing business in Texas.
- 1.11 As used herein, AM-MI means the applicable above listed ILEC doing business in Michigan.



- 1.12 As used herein, AM-IN means the applicable above listed ILEC doing business in Indiana.
- 1.13 As used herein, AM-IL means the applicable above listed ILEC doing business in Illinois.
- 1.14 As used herein, AM-OH means the applicable above listed ILEC doing business in Ohio.
- 1.15 As used herein, AM-WI means the applicable above listed ILEC doing business in Wisconsin.
- 1.16 As used herein, PACIFIC means the applicable above listed ILEC doing business in California.
- 1.17 As used herein, NEVADA means the applicable above listed ILEC doing business in Nevada.
- 1.18 As used herein, SNET means the applicable above listed ILEC doing business in Connecticut.
- 1.19 The prices at which SBC agrees to provide CLEC with Resale Services are contained in the applicable Appendix Pricing and/or the applicable Commission ordered tariff where stated.

## 2. DESCRIPTION AND CHARGES FOR SERVICES

- 2.1 A list of Telecommunications Services currently available for resale at the wholesale discount rate for each service determined by the appropriate Commission is set forth in Appendix Pricing. Except as otherwise expressed herein, consistent with SBC-13STATE's obligation under Section 251(c)(4)(A) of the Act and any other applicable limitations or restrictions, CLEC may resell other Telecommunications Services offered at retail by SBC-13STATE at the discount set forth in Appendix Pricing.

- 2.1.1 This section applies only to SWBT-KS:

- 2.1.1.1 CLEC shall select either (1) a uniform rate structure or (2) a three-tier discount structure based on lines, vertical features and toll. The three-tier discount structure will be made available upon written request from CLEC negotiating an interconnection agreement with SWBT.

- 2.2 SBC-13STATE will offer products and services to CLEC for resale pursuant to relevant decisions of the appropriate Commission.

- 2.3 Telecommunications Services will be offered by SBC-13STATE to CLEC for resale on terms and conditions that are reasonable and nondiscriminatory.
- 2.4 Grandfathered services are available per appropriate state specific tariff to CLEC for resale at the applicable discount only to the same End User, at the existing End User's location, to which SBC-13STATE provides the service, either at retail or through resale.

### 3. TERMS AND CONDITIONS OF SERVICE

- 3.1 Except as otherwise expressly provided herein, for Telecommunications Services included within this Appendix that are offered by SBC-13STATE to SBC-13STATE's End Users through tariff(s), the rules and regulations associated with SBC-13STATE's retail tariff(s) shall apply when the services are resold by CLEC, with the exception of any tariff resale restrictions; provided, however, any tariff restrictions on further resale by the End User shall continue to apply. Use limitations shall be in parity with services offered by SBC-13STATE to its End Users.
- 3.2 CLEC shall only sell Plexar®, Centrex and Centrex-like services to a single End User or multiple End User(s) in accordance with the terms and conditions set forth in the corresponding SBC-13STATE retail tariff(s) applicable within that state.
- 3.3 Except where otherwise explicitly permitted in SBC-13STATE's corresponding retail tariff(s), CLEC shall not permit the sharing of a service by multiple End User(s) or the aggregation of traffic from multiple End User(s) onto a single service.
  - 3.3.1 This section applies only to SWBT-TX:
    - 3.3.1.1 Within the State of Texas, based upon the Texas Commission's arbitration order, SWBT-TX will permit aggregation for purposes of the resale of volume discount offers. Volume discount offers include such items as intraLATA toll, but do not include such items as packages of vertical features.
- 3.4 CLEC shall only resell services furnished under this Appendix to the same category of End User(s) to whom SBC-13STATE offers such services (for example, residence service shall not be resold to business End Users).
  - 3.4.1 SBC-13STATE - CLEC may only resell special needs services" as identified in associated state specific tariffs to persons who are eligible for each such service. As used herein, the term "special needs services" means services for the physically disabled where the disability is related to vision, speech, hearing or motion. Further, to the extent CLEC resells services that require certification on the part of the End User, CLEC shall ensure that the End User has obtained proper certification, continues to be eligible for the

program(s), and complies with all rules and regulations as established by the appropriate Commission and the state specific SBC-13STATE tariffs.

3.4.2 This section applies only to SBC-SWBT, AM-WI, AM-OH and AM-IN:

3.4.2.1 CLEC may only resell SBC-SWBT, AM-WI, AM-OH and AM-IN low income assistance services, e.g. LifeLine and Link-Up services, where available for resale, according to associated retail state specific tariffs to persons who are eligible for each such service. Further, to the extent CLEC resells services that require certification on the part of the End User, CLEC shall ensure that the End User meets all associated tariff eligibility requirements, has obtained proper certification, continues to be eligible for the program(s), and complies with all rules and regulations as established by the appropriate Commission and the state specific SBC-SWBT, AM-WI, AM-OH and AM-IN tariffs.

3.4.3 This section applies only to PACIFIC, SNET and SBC-AM-IL:

3.4.3.1 PACIFIC, SNET and SBC-AM-IL LifeLine and Link-Up services are not available for resale.

3.4.3.2 CLEC is exclusively responsible for all aspects of any similar CLEC-offered program, including ensuring that any similar CLEC-offered program(s) complies with all applicable federal and state requirements, obtaining all necessary End User certifications and re-certifications, submitting written designation that any of CLEC's End User or applicants are eligible to participate in such programs, submitting CLEC's claims for reimbursement to any applicable governmental authority and any other activities required by any applicable governmental authority.

3.4.4 This section applies only to NEVADA:

3.4.4.1 NEVADA low income assistance services, e.g., LifeLine and Link-Up services are available for resale for a maximum period of 90 days from contract approval date. The CLEC has 90 days from the contract approval date to coordinate with the appropriate federal and state government agencies to establish the CLEC's own low income assistance service(s). At the end of the 90 day period, CLEC is responsible for initiating Local Service Requests (LSR) to the ILEC for converting any existing ILEC Customer Service Records (CSR) from low income designated services to normal residential service. CLEC will be responsible for designating its own billing records and

establishing and administering its low income assistance services internally.

3.4.4.2 CLEC is exclusively responsible for all aspects of any similar CLEC-offered program, including ensuring that any similar CLEC-offered program(s) complies with all applicable federal and state requirements, obtaining all necessary End User certifications and recertifications, submitting written designation that any of CLEC's End User or applicants are eligible to participate in such programs, submitting CLEC's claims for reimbursement to any applicable governmental authority and any other activities required by any applicable governmental authority.

### 3.5 Promotions

3.5.1 Promotions are available for the Telecommunications Services outlined in Appendix Pricing in the "Resale" category and in accordance with state specific Commission requirements.

3.5.2 This section applies only to NEVADA and SWBT-MO:

3.5.2.1 Promotions of eighty-nine (89) days or less are not available to CLEC for resale.

3.5.2.2 Promotions of ninety (90) days or more are available to CLEC for resale at the applicable wholesale discount, state specific.

3.5.3 This section applies only to PACIFIC, SBC-AMERITECH, SNET, and SWBT-AR:

3.5.3.1 Promotions of ninety (90) days or less are not available to CLEC for resale.

3.5.3.2 Promotions of ninety-one (91) days or more are available to CLEC for resale and at the applicable wholesale discount, state specific.

3.5.4 This section applies only to SWBT-KS, SWBT-TX, and SWBT-OK:

3.5.4.1 Promotions on Telecommunications Services are available to CLEC for resale. The applicable, state specific, wholesale discount will be applied to those promotions of ninety-one (91) days or more.

3.6 CLEC shall not use a resold service to avoid the rates, terms and conditions of SBC-13STATE's corresponding retail tariff(s).

- 3.7 CLEC shall not use resold local Telecommunications Services to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers; provided, however, that CLEC may permit its End Users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.
- 3.8 A Federal End User Common Line charge and any other appropriate Commission-approved charges, as set forth in the appropriate SBC-13STATE federal and applicable state tariff(s) will apply to each local exchange line furnished to CLEC under this Appendix for resale.
- 3.9 To the extent allowable by law, CLEC shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to CLEC for resale. CLEC shall pay all charges for PIC and LPIC changes at the tariffed rate(s).
- 3.10 SBC-13STATE shall provide the services covered by this Appendix subject to availability of existing facilities and on a nondiscriminatory basis with its other customers. CLEC shall resell the services provided herein only in those service areas in which such resale services or any feature or capability thereof are offered to End Users at retail by SBC-13STATE as the incumbent local exchange carrier.
- 3.11 When an End User converts existing service to CLEC resold service of the same type without any additions or changes, charges for such conversion will apply as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "conversion charges," and are applied per billable telephone number.
- 3.11.1 When an End User(s) subscribes to CLEC resold service, recurring charges for the service shall apply at the wholesale discount set forth in Appendix Pricing. The tariff rates for such resold service shall continue to be subject to orders of the appropriate Commission.
- 3.11.2 When CLEC converts an End User(s) existing service and additions or changes are made to the service at the time of the conversion, the normal service order charges and/or non-recurring charges associated with said additions and/or changes will be applied in addition to the conversion charge. CLEC will receive a wholesale discount on all non-recurring service order charges for the services listed in Appendix Pricing under the heading "Resale;" no wholesale discount is available for the non-recurring service order charges for those services listed in Appendix Pricing under the heading "OTHER (Resale)."

- 3.11.3 For the purposes of ordering service furnished under this Appendix, each request for new service (that is, service not currently being provided to the End User on SBC-13STATE's network, without regard to the identity of that End User's non-facilities based local service provider of record) shall be handled as a separate initial request for service and shall be charged per billable telephone number.
- 3.11.4 Where available, the tariff retail additional line rate for Service Order Charges shall apply only to those requests for additional residential service to be provided at the same End User premises to which a residential line is currently provided on SBC-13STATE's network, without regard to the identity of that End User's non-facilities based local service provider of record.
- 3.12 If CLEC is in violation of any provision of this Appendix, SBC-13STATE will notify CLEC of the violation in writing. Such notice shall refer to the specific provision being violated. CLEC will have thirty (30) calendar days to correct the violation and notify SBC-13STATE in writing that the violation has been corrected. SBC-13STATE will bill CLEC a sum equal (i) the charges that would have been billed by SBC-13STATE to CLEC or any Third Party but for the stated violation and (ii) the actual revenues CLEC billed its End User(s) in connection with the stated violation, whichever is greater. Should CLEC dispute the stated violation, CLEC must notify SBC-13STATE in writing of the specific details and reasons for its dispute within fourteen (14) calendar days of receipt of the notice from SBC-13STATE and comply with Sections 8.3 through 8.7 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Resolution of any dispute by CLEC of the stated violation shall be conducted in compliance with the Dispute Resolution provisions set forth in the General Terms and Conditions of the Agreement to which this Appendix is attached.
- 3.12 SBC-13STATE's services are not available at wholesale rates to CLEC for its own use or for the use of any of CLEC's affiliates and/or subsidiaries or the use of CLEC's parent or any affiliate and/or subsidiary of CLEC's parent company, if any.
- 3.14 This section applies only to SWBT-KS, SWBT-TX and SWBT-MO:
- 3.14.1 CLEC may convert current SWBT-KS, SWBT-TX and SWBT-MO End User(s) that have existing term, volume, termination liability or any customer specific pricing contracts (collectively referred to hereinafter as "CSP Contracts") for services offered within the State of Kansas or Texas, and
- 3.14.2 SWBT-KS, SWBT-TX and SWBT-MO and any other reseller of SWBT-KS, SWBT-TX or SWBT-MO local service may convert current CLEC End User(s) that have existing CSP Contracts for services offered within the State of Kansas, Texas or Missouri.

- 3.14.3 In the event of a conversion under either Section 3.14.1 or 3.14.2, CLEC and SWBT-KS, SWBT-TX or SWBT-MO shall comply with all of the terms and conditions set forth in Sections 3.14.4 and 3.14.5.
- 3.14.4 Responsibilities of CLEC in connection with Assumption of CSP Contract Conversions.
- 3.14.4.1 CLEC shall sign an "Assumption of Existing Agreement" assuming the balance of the terms, including volume, term and termination liability remaining on any current retail SWBT-KS, SWBT-TX, or SWBT-MO or resold End User CSP Contract at the time of conversion. CLEC may assume the CSP Contract at the wholesale discount of 5.0% in Kansas and 5.62% in Texas. CLECs may assume tariffed volume and term contracts at the wholesale discount of 8.0% in the State of Kansas and 8.04% in the State of Texas.
- 3.14.4.2 SWBT-MO tariffed and Individual Case Basis (ICB) contracts may be assumed, but receive no wholesale discount.
- 3.14.4.3 CLEC shall not charge CLEC's End User termination liability when an existing CSP contract between CLEC and its End User is converted to SWBT-KS, SWBT-TX, or SWBT-MO or any other local service provider reselling SWBT-KS, SWBT-TX, or SWBT-MO local service.
- 3.14.4.4 If another reseller of SWBT-KS, SWBT-TX, or SWBT-MO local service converts a current CLEC End User(s) that has an existing CSP Contract, it is CLEC's responsibility to address assumption of the CSP contract and termination liability with the other reseller. CLEC agrees that SWBT-KS, SBC-TX, or SWBT-MO has no responsibilities in such a situation, and CLEC further agrees that it will not make any Claim against SWBT-KS, SWBT-TX, or SWBT-MO in connection with any conversion by another reseller of SWBT-KS, SWBT-TX, or SWBT-MO local service of any CLEC End User(s) that has an existing CSP contract.
- 3.14.5 Responsibilities of SWBT-KS, SWBT-TX, and SWBT-MO in connection with Assumptions of CSP Contract Conversions:
- 3.14.5.1 SWBT-KS, SWBT-TX, and SWBT-MO will not charge its retail End User termination liability when an existing CSP contract is converted to CLEC for resale.
- 3.14.5.2 SWBT-KS, SWBT-TX, or SWBT-MO will assume in writing the balance of the terms, including volume, term and termination

liability remaining on a current CSP contract between CLEC and its End User at the time that CLEC's End User is converted to SWBT-KS, SWBT-TX, or SWBT-MO.

3.15 This section applies only to SBC-AMERITECH:

- 3.15.1 SBC-AMERITECH retail contracts may be assumed unless expressly prohibited by the contract. Contracts for grandfathered and/or sunsetted services may not be assumed.

3.15.2 Subject to the provisions of Section 3.15.1, the following shall apply:

3.15.2.1 AM-IL tariffed and Individual Case Basis (ICB) contracts that are assumed receive a wholesale discount of 3.16%.

3.15.2.2 AM-MI tariffed and Individual Case Basis (ICB) contracts that are assumed receive a wholesale discount of 3.39%.

3.15.2.3 AM-OH, and AM-WI tariffed and Individual Case Basis (ICB) contracts may be assumed, but receive no wholesale discount.

3.15.2.4 AM-IN tariffed and Individual Case Basis (ICB) contracts that are assumed will receive an interim wholesale discount of 3.39%. Final wholesale discount will be applied on a going forward basis awaiting the outcome of the pending cost study.

3.15.2.5 SBC-AMERITECH Non-Standard Service contracts may be assumed, but receive no wholesale discount.

3.15.3 If CLEC elects to terminate a SBC-AMERITECH retail contract which CLEC had previously assumed, CLEC will be assessed the applicable termination charges remaining unless CLEC elects to simultaneously replace the existing contract with a contract of greater term and/or volume at the same discount CLEC receives for the previously assumed but now terminated contract.

#### 4. ANCILLARY SERVICES

4.1 Where available, SBC-13STATE will afford CLEC's End Users the ability to make 911 calls. CLEC shall be responsible for collecting and remitting all applicable 911 fees and surcharges on a per line basis to the appropriate Public Safety Answering Point (PSAP) or other governmental authority responsible for collection of such fees



and surcharges. When requested by SWBT, CLEC shall provide SBC-13STATE with accurate and complete information regarding CLEC's End User(s) in a format and time frame prescribed by SBC-13STATE for purposes of E911 administration.

- 4.1.1 Should any CLEC End User assert any Claim that relates to access to 911, the limitations of liability set forth in Appendix 911, which is attached to the General Terms and Conditions of the Agreement to which this Appendix is attached, shall govern all Claims that may be asserted against any Party to this Appendix relating to access to 911, whether such assertion is made by the other Party or any Third Party, and such provisions are incorporated herein for all purposes as though set forth herein.
- 4.2 Subject to SBC-13STATE's practices, as well as the rules and regulations applicable to the provision of White Pages directories, SBC-13STATE will include in appropriate White Pages directories the primary alphabetical listings of all CLEC End Users located within the local directory scope. The rules, regulations and SBC-13STATE practices are subject to change from time to time.
- 4.3 Additional Listing services, as set forth in Appendix Pricing, may be purchased by CLEC for its End Users on a per listing basis.
- 4.4 Liability relating to End User Listings
  - 4.4.1 CLEC hereby releases SBC-13STATE from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided to SBC-13STATE under this Appendix, and/or CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.
  - 4.4.2 In addition to any other indemnity obligations in this Appendix or the Agreement to which this Appendix is attached, CLEC shall indemnify, protect, save harmless and defend SBC-13STATE and SBC-13STATE's officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in CLEC's End User listing information, including any error or omission related to non-published or non-listed End User listing information. CLEC shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against CLEC and SBC-13STATE, and/or against SBC-13STATE alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in CLEC's End User listing information in the White Pages directory, SBC-13STATE may, at its option, assume and undertake its own defense, or assist in the defense of the CLEC, in which event the CLEC shall reimburse SBC-13STATE for

reasonable attorney's fees and other expenses incurred by SBC-13STATE in handling and defending such demand, claim and/or suit.

- 4.5 Each CLEC subscriber will receive one copy per primary End User listing of SBC-13STATE's White Pages directory in the same manner and at the same time that they are delivered to SBC-13STATE's subscribers.
- 4.5.1 If CLEC's End User already has a current SBC-13STATE local White Pages directory, SBC-13STATE shall not be required to deliver a directory to that End User until new White Pages directories are published for that End User's location.
- 4.6 SBC-8STATE will provide CLEC with 1/8<sup>th</sup> page in each directory (where the CLEC has or plans to have local telephone exchange customers) for the CLEC to include CLEC specific-information (i.e., business office, residence office, repair bureau, etc.) in the White Pages directory on an "index-type" informational page. No advertising will be permitted on such informational page. This page will also include specific information pertaining to other CLECs. At its option, CLEC shall provide SBC-8STATE with its logo and information in the form of a camera-ready copy, sized at 1/8<sup>th</sup> of a page. The content of CLEC's camera-ready copy shall be subject to SBC-8STATE approval. In those directories in which SBC-8STATE includes Spanish Customer Guide Pages, this informational page will also be provided in Spanish at CLEC's request, subject to the guidelines set forth above.
- 4.7 At its request, CLEC may purchase one one-sided "Informational Page" in the informational section of the White Pages directory covering a geographic area where CLEC provides local telecommunications exchange service. Such page shall be no different in style, size, color and format than SBC-8STATE "Informational Page". Sixty (60) calendar days prior to the directory close date, the CLEC shall provide to SBC-8STATE the "Informational Page" in the form of camera-ready copy.
- 4.8 Subject to any blocking that may be ordered by CLEC for its End Users', to the extent Directory Assistance (DA) services are provided to SBC-13STATE End Users, SBC-13STATE shall provide CLEC's End Users access to SBC-13STATE Directory Assistance services. CLEC shall pay SBC-13STATE the charges attributable to Directory Assistance services utilized by CLEC's End Users.
- 4.9 Subject to any blocking that may be ordered by CLEC for its End Users', SBC-13STATE will provide access to Operator Services ("OS") to CLEC's End Users to the same extent it provides OS to its own End Users. CLEC shall pay the charges associated with the utilization of OS by CLEC's End Users. Discounts associated with the utilization of OS are set forth in Appendix Pricing.
- 4.10 SBC-13STATE offers CLEC the opportunity to customize route its End Users' /OS/DA calls where technically feasible.

#### 4.11 OS/DA Branding

4.11.1 Where technically feasible and/or available, SBC-13STATE will brand Operator Services (OS) and/or Directory Assistance (DA) in CLEC's name as outlined below:

##### 4.11.2 Call Branding

4.11.2.1 SBC-13STATE will brand OS/DA in CLEC's name based upon the information provided by CLEC and as outlined below:

4.11.3 SBC-13STATE – CLEC will provide written specifications of its company name to be used by SBC-13STATE to create CLEC specific branding announcements for its OS/DA calls in accordance with the process outlined in the Operator Services OS/DA Questionnaire (OSQ).

4.11.4 CLEC name used in branding calls may be subject to Commission regulations and should match the name in which CLEC is doing business.

#### 4.12 Branding Load Charges:

4.12.1 SBC-SWBT – An initial non-recurring charge applies per state, per brand, per Operator assistance switch for the establishment of CLEC specific branding. An additional non-recurring charge applies per state, per brand, per Operator assistance switch for each subsequent change to the branding announcement. In addition, a per call charge applies for every OS/DA call handled by SBC-SWBT on behalf of CLEC when multiple brands are required on a single Operator Services trunk. This charge is set forth in Appendix Pricing under the "OTHER (Resale)" category.

4.12.1.1 SBC-AMERITECH – An initial non-recurring charge applies per brand, per Operator Assistance Switch, per trunk group for the establishment of CLEC specific branding. In addition, a per call charge applies for every OS call handled by SBC-AMERITECH on behalf of CLEC when such services are provided. An additional non-recurring charge applies per brand, per Operator assistance switch, per trunk group for each subsequent change to the branding announcement.

4.12.1.2 SBC-2STATE – An initial non-recurring charge applies per state, per brand, per Operator assistance switch, for the establishment of CLEC specific branding. An additional non-recurring charge applies per state, per brand, per Operator assistance switch for each subsequent change to the branding announcement.

4.12.1.3 SNET – An initial non-recurring charge applies per brand, per load, per Operator assistance switch for the establishment of CLEC specific branding. An additional non-recurring charge applies per brand, per load, per Operator assistance switch for each subsequent change to the branding announcement.

## 5. OS/DA RATE/REFERENCE INFORMATION

5.1 When an SBC-12STATE Operator receives a rate request from a CLEC End User, where technically feasible and available, SBC-12STATE will quote the applicable OS/DA rates as provided by the CLEC.

5.2 SNET- until technically feasible and/or available, when a SNET Operator receives a rate request from a CLEC end user, SNET will quote the surcharge rate only.

5.3 CLEC will furnish OS/DA Rate and Reference Information in accordance with the process outlined in the Operator Services Questionnaire (OSQ). CLEC will furnish to SBC-13STATE a completed OSQ thirty (30) calendar days in advance of the date when the DA Services are to be undertaken.

5.4 CLEC will inform SBC-12STATE, via the Operator Services Questionnaire (OSQ) of any changes to be made to such Rate/Reference Information fourteen calendar days prior to the effective Rate/Reference change date. CLEC acknowledges that it is responsible to provide SBC-12STATE updated Rate/Reference Information in advance of when the Rate/Reference Information is to become effective.

5.5 An initial non-recurring charge will apply per state, per Operator assistance switch for loading of CLEC's OS Reference/Rater information. An additional non-recurring charge will apply per state, per Operator assistance switch for each subsequent change to either the CLEC's OS Reference or Rater information.

### 5.6 Payphone Services

5.6.1 CLEC may provide certain local Telecommunications Services to payphone service providers ("PSPs") for PSPs' use in providing payphone service. Local Telecommunications Services which PSPs use in providing payphone service that are provided to PSPs by CLEC by means of reselling SBC-13STATE's services offered pursuant to the appropriate payphone section(s)

of SBC-13STATE's state specific tariff(s) applicable in each state covered by this Appendix are referred to in this Appendix as "Payphone Lines." In its Common Carrier Docket No. 96-128, the FCC ordered SBC-13STATE to compensate PSP customers of CLECs that resell SBC-13STATE's services for certain calls originated from pay telephones. (Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC Docket No. 96-128, Report and Order, para. 86 (1996)). This compensation is referred to in this Agreement as "Payphone Compensation."

- 5.6.2 The Parties desire that SBC-13STATE satisfy the obligation to pay Payphone Compensation to PSPs that are customers of CLEC by paying the Payphone Compensation to CLEC, who will then forward the Payphone Compensation directly to the PSPs.
- 5.6.3 SBC-13STATE will pay Payphone Compensation due with respect to Payphone Lines in compliance with the current or any future order of the FCC. SBC-13STATE will pay Payphone Compensation to CLEC only for:
  - 5.6.3.1 IntraLATA subscriber 800 calls for which SBC-13STATE provides the 800 service to the subscriber and carries the call; and
  - 5.6.3.2 IntraLATA calls placed using SBC-13STATE's prepaid calling card platform and carried by SBC-13STATE.
- 5.6.4 SBC-13STATE will not be required to pay any Payphone Compensation for non-sent paid calls.
- 5.6.5 SBC-13STATE will pay CLEC the Payphone Compensation due to CLEC's PSP customer(s) within sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made. However, payment may be made later than sixty (60) calendar days if SBC-13STATE deems it necessary to investigate a call or calls for possible fraud.
- 5.6.6 SBC-13STATE will make payment of any Payphone Compensation due to CLEC under this Appendix by crediting CLEC's bill for the Payphone Line over which the call that gives rise to the Payphone Compensation was placed. SBC-13STATE will not automatically issue a check to CLEC if the credit for Payphone Compensation exceeds the balance due to SBC-13STATE on the bill.
- 5.6.7 Nothing in this Appendix entitles CLEC to receive or obligates SBC-13STATE to provide any call detail or other call record for any call that gives rise to Payphone Compensation.

- 5.6.8 CLEC represents and warrants that the only SBC-13STATE services that CLEC will make available to PSPs as Payphone Lines are the payphone services that SBC-13STATE offers pursuant to the appropriate payphone section(s) of SBC-13STATE's state specific tariff(s) applicable in each state covered by this Appendix.
- 5.6.9 Except as provided otherwise in this Section 4.9.9, CLEC shall pay the entire amount of the Payphone Compensation due with respect to each Payphone Line to the PSP that is the CLEC's customer for that Payphone Line. CLEC shall make such payment on or before the last business day of the calendar quarter following the calendar quarter during which the call(s) for which Payphone Compensation is due to the PSP were made. If SBC-13STATE pays any Payphone Compensation to CLEC later than sixty (60) calendar days after the close of the calendar quarter during which the call(s) for which Payphone Compensation is due were made, then CLEC shall pay the entire amount of such Payphone Compensation to the PSP that is CLEC's customer for that Payphone Line within ten (10) calendar days after receiving such Payphone Compensation from SBC-13STATE.
- 5.6.10 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, CLEC shall indemnify, protect, save harmless and defend SBC-13STATE and SBC-13STATE's officers, employees, agents, representatives and assigns from and against any and all losses, costs, liability, damages and expense (including reasonable attorney's fees) arising out of any demand, claim, suit or judgment by any Third Party, including a PSP, in any way relating to or arising from any of the following:
- 5.6.10.1 CLEC's failure to comply with all the terms and conditions of this Appendix; or
  - 5.6.10.2 Use by a PSP customer of CLEC of any service other than a Payphone Line to provide pay telephone service; or
  - 5.6.10.3 False representation by CLEC.
- 5.7 Suspension of Service
- 5.7.1 CLEC may offer to resell Customer Initiated Suspension and Restoral Service to its End Users at the associated state specific retail tariff rates, terms and conditions for suspension of service at the request of the End User.
- 5.7.2 SBC-13STATE will offer CLEC local service provider initiated suspension service for CLEC's purposes at the associated SBC-13STATE state specific retail tariff rate for company initiated suspension of service. Service specifics may be obtained in state specific CLEC Handbooks.

5.7.2.1 CLEC shall be exclusively responsible for placing valid orders for the suspension and the subsequent disconnection or restoral of service to each of its End Users.

5.7.2.2 Should CLEC suspend service for one of its End Users and fail to submit a subsequent disconnection order within the maximum number of calendar days permitted for a company initiated suspension pursuant to the state specific retail tariff, CLEC shall be charged and shall be responsible for all appropriate monthly service charges for the End User's service from the suspension date through the disconnection date.

5.7.2.3 Should CLEC suspend service for one of its End Users and subsequently issue a restoral order, CLEC shall be charged the state specific tariff rate for the restoral plus all appropriate monthly service charges for the End User's service from the suspension date through the restoral date.

## 6. USE OF SBC BRAND

6.1 Except where otherwise required by law, CLEC shall not, without SBC-13STATE's prior written authorization, offer the services covered by this Appendix using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of SBC-13STATE or its Affiliates, nor shall CLEC state or imply that there is any joint business association or similar arrangement with SBC-13STATE in the provision of Telecommunications Services to CLEC's customers.

## 7. RESPONSIBILITIES OF SBC-13STATE

7.1 SBC-13STATE shall allow CLEC to place service orders and receive phone number assignments (for new lines). These activities shall be accomplished by facsimile or electronic interface. SBC-13STATE shall provide interface specifications for electronic access for these functions to CLEC. However, CLEC shall be responsible for modifying and connecting any of its systems with SBC-13STATE-provided interfaces, as outlined in Appendix OSS.

7.2 SBC-13STATE shall implement CLEC service orders within the same time intervals SBC-13STATE uses to implement service orders for similar services for its own End Users.

7.2.1 Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line, as amended by SBC-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.

- 7.3 CLEC will have the ability to report trouble for its End Users to the appropriate SBC-13STATE trouble reporting center(s) twenty-four (24) hours a day, seven (7) days a week. CLEC will be assigned customer contact center(s) when initial service agreements are made. CLEC End Users calling SBC-13STATE will be referred to CLEC at the number provided by CLEC. Nothing herein shall be interpreted to authorize CLEC to repair, maintain, or in any way touch SBC-13STATE's network facilities, including those on End User premises.
- 7.3.1 Methods and procedures for trouble reporting are outlined in the CLEC Handbook, available on-line, as amended by SBC-13STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained therein.
- 7.4 SBC-13STATE will provide CLEC with detailed billing information necessary for CLEC to issue bill(s) to its End User(s). CLEC has the option of receiving a daily usage file ("DUF") in accordance with the terms and conditions set forth in Section 8.8 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Should CLEC elect to subscribe to the DUF, CLEC agrees to pay SBC-13STATE the charges specified in Appendix Pricing under the "OTHER (Resale)" category listed as "Electronic Billing Information Data (daily usage) (per message)."
- 7.5 SBC-13STATE shall make Telecommunications Services that SBC-13STATE provides at retail to subscribers who are not Telecommunications Carriers available for resale consistent with the obligation under Section 251(c)(4)(A) of the Act and other applicable limitations. SBC-13STATE will notify CLEC of any changes in the terms and conditions under which SBC-13STATE offers Telecommunications Services at retail to subscribers who are not Telecommunications Carriers, including but not limited to, the introduction of any new features, functions, services, promotions, grandfathering or the discontinuance of current features or services at the time a tariff filing is transmitted to the appropriate State Commission, or, in situations where a tariff filing is not so transmitted, within sixty (60) calendar days of the expected effective date of such change.
- 7.5.1 SBC-13STATE currently makes such notification as described in Section 17.2 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Notification of any new service available to CLEC for resale shall advise CLEC of the category in which such new service shall be placed, and the same discount already applicable to CLEC in that category shall apply to the new service.
- 7.6 CLEC's End User's activation of Call Trace shall be handled by the SBC-13STATE operations centers responsible for handling such requests. SBC-13STATE shall notify CLEC of requests by its End Users to provide call records to the proper authorities. Subsequent communication and resolution of each case involving one



of CLEC's End Users (whether that End User is the victim or the suspect) will be coordinated through CLEC.

7.6.1 CLEC acknowledges that for services where reports are provided to law enforcement agencies (for example, Call Trace) only billing number and address information shall be provided. It shall be CLEC's responsibility to provide additional information necessary for any police investigation.

7.6.1.1 In addition to any other indemnity obligations in this Appendix or the Agreement to which this Appendix is attached, CLEC shall indemnify SBC-13STATE against any Claim that insufficient information led to inadequate prosecution.

7.6.2 SBC-13STATE shall handle law enforcement requests consistent with the Law Enforcement Section of the General Terms and Conditions of the Agreement to which this Appendix is attached.

7.7 This section applies only to PACIFIC:

7.7.1 Cooperation on Fraud

7.7.1.1 Traffic Alert Referral Service

7.7.1.1.1 Traffic Alert Referral Service ("TARS") is a service that monitors traffic patterns associated with a CLEC's resold lines. On no less than thirty (30) calendar days written notice, CLEC may order PACIFIC's TARS. In providing TARS to CLEC, PACIFIC notifies the CLEC of traffic abnormalities that indicate the possible occurrence of intraLATA fraud and furnishes to CLEC information on all 1+ alerts. CLEC understands and agrees that PACIFIC will use electronic mail to provide such information and that such information will only be available via electronic mail at the present time. It is the responsibility of CLEC to provide PACIFIC with the correct email address. Information will be provided on a per-alert basis and will be priced on a per-alert basis. PACIFIC grants to CLEC a non-exclusive right to use the information provided by PACIFIC. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information. CLEC agrees to pay PACIFIC a recurring usage rate as set forth in Appendix Pricing in the "OTHER (Resale)" category listed as "Traffic Alert Referral Service."

7.7.1.2 CLEC shall be liable for all fraud associated with any resale service to which it subscribes. PACIFIC takes no responsibility, will not investigate, and will make no adjustments to CLEC's account(s) in cases of fraud or any other related End User dispute.

7.7.1.3 In addition to any other indemnity obligations in this Appendix or in the Agreement to which this Appendix is attached, PACIFIC shall not be liable for any damages to CLEC or to any other person or entity for PACIFIC's actions or the conduct of its employees in providing TARS to CLEC. CLEC shall indemnify, defend, and hold PACIFIC harmless from any and all claims, lawsuits, costs, damages, liabilities, losses, and expenses, including reasonable attorney fees, resulting from or in connection with CLEC's use of PACIFIC's TARS, except when such claims, lawsuits, costs, damages, liabilities, losses, or expenses are proximately caused by the willful misconduct or gross negligence of PACIFIC or its employees.

7.8 This section applies only to PACIFIC:

7.8.1 PACIFIC will make available to CLEC an optional service, Repair Transfer Service ("RTS"). In the event a CLEC's End User dials 611 (811-8081 for Priority Business customers) for repair, PACIFIC will provide a recorded announcement of the CLEC name and number and PACIFIC will automatically transfer the caller to the CLEC designated 800/888 number for repair service. CLEC must provide written notification to PACIFIC at least thirty (30) calendar days prior to the implementation of RTS. Written notification must include the CLEC name and 800/888 numbers for RTS to the CLEC repair bureau and business office. There will be no charges associated with the initial set-up for RTS, however, charges will apply to any subsequent changes to the recorded name announcement and telephone number. Rates for subsequent changes are set forth in the Appendix Pricing in the "OTHER (Resale)" category listed as "Repair Transfer Service." Subsequent charges include: Recorded Name Announcement, 800/888 Telephone Number and Name Announcement & Telephone Number.

## 8. RESPONSIBILITIES OF CLEC

8.1 Prior to submitting an order under this Appendix, CLEC shall obtain End User authorization as required by applicable federal and state laws and regulations, and assumes responsibility for applicable charges as specified in Section 258(b) of the Act. SBC-13STATE shall abide by the same applicable laws and regulations.

8.2 Only an End User can initiate a challenge to a change in its local service provider. If an End User notifies SBC-13STATE or CLEC that the End User requests local exchange service, the Party receiving such request shall be free to provide service to

such End User, except in those instances where the End User's account is local PIC protected. It is the responsibility of the End User to provide authorization in a FCC approved format to the current provider of record to remove local service provider protection before any changes in local service provider are processed.

8.2.1 SBC-13STATE shall be free to connect an End User to any competitive local exchange carrier based upon that competitive local exchange carrier's request and that competitive local exchange carrier's assurance that proper End User authorization has been obtained. CLEC shall make any such authorization it has obtained available to SBC-13STATE upon request and at no charge.

8.2.1.1 The following applies to AM-MI only: The Parties will adhere to the requirements adopted by the Commission in its Case No. U-11900 with respect to the selection of primary local exchange carriers and primary interexchange carriers.

8.3 When an End User changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the End User's direction or the direction of the End User's authorized agent. Further, when an End User abandons its premise, SBC-13STATE is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.

8.4 Neither Party shall be obligated by this Appendix to investigate any allegations of unauthorized changes in local exchange service (slamming) on behalf of the other Party or a Third Party. If SBC-13STATE, on behalf of CLEC, agrees to investigate an alleged incidence of slamming, SBC-13STATE shall charge CLEC an investigation fee as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Slamming Investigation Fee."

8.5 Should SBC-13STATE receive an order from CLEC for services under this Appendix, and SBC-13STATE is currently providing the same services to another local service provider for the same End User, CLEC agrees that SBC-13STATE may notify the local service provider from whom the End User is being converted of CLEC's order coincident with or following processing CLEC's order. It shall then be the responsibility of the former local service provider of record and CLEC to resolve any issues related to the End User. This Section 8.5 shall not apply to new or additional lines and services purchased by the End User from multiple CLECs or from SBC-13STATE.

8.5.1 If SBC-13STATE receives an order from another local service provider to convert services for an End User for whom CLEC is the current local service provider of record, and if CLEC already subscribes to the Local Disconnect Report ("LDR"), covered in Section 8.5.2, then SBC-13STATE shall notify CLEC of such order coincident with or following processing such order. It shall be the responsibility of CLEC and the other local service provider to

resolve any issues related to the End User. This Section 8.5.1 shall not apply to new or additional lines and services purchased by an End User from multiple CLECs or from SBC-13STATE.

- 8.5.2 On no less than sixty (60) calendar days advance written notice, CLEC may, at its option, subscribe to the LDR. SBC-13STATE will furnish the following information via the LDR: the Billing Telephone Number ("BTN"), Working Telephone Number "WTN"), and terminal number of all End Users who have disconnected CLEC's service. Information furnished electronically will be provided daily on a per WTN basis and priced on a per WTN basis. CLEC shall pay SBC-13STATE for the LDR per WTN plus any applicable transmission charges for the LDR; current WTN prices are as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Local Disconnect Report." CLEC agrees that SBC-13STATE may change the per WTN charge, at SBC-13STATE's sole discretion, so long as SBC-13STATE provides CLEC no less than thirty (30) calendar days notice prior to any change in the per WTN charge. SBC-13STATE grants to CLEC a non-exclusive right to use the LDR information provided by SBC-13STATE. CLEC will not permit anyone but its duly authorized employees or agents to inspect or use this information.
- 8.6 CLEC is solely responsible for the payment of all charges for all services furnished under this Appendix, including but not limited to, calls originated or accepted at CLEC's location and its End Users' service locations; provided, however, CLEC shall not be responsible for payment of charges for any retail services furnished by SBC-13STATE directly to End Users and billed by SBC-13STATE directly to End Users.
- 8.6.1 Interexchange carried traffic (for example, sent-paid, information services and alternate operator services messages) received by SBC-13STATE for billing to resold End User accounts will be returned as unbillable and will not be passed to CLEC for billing. An unbillable code will be returned with those messages to the carrier indicating that the messages originated from a resold account and will not be billed by SBC-13STATE.
- 8.7 SBC-13STATE shall not be responsible for the manner in which utilization of resold services or the associated charges are allocated to End Users or others by CLEC. All applicable rates and charges for services provided to CLEC under this Appendix will be billed directly to CLEC and shall be the responsibility of CLEC; provided, however, that CLEC shall not be responsible for payment of charges for any retail services furnished by SBC-13STATE directly to End Users and billed by SBC-13STATE directly to End Users.

- 8.7.1 Charges billed to CLEC for all services provided under this Appendix shall be paid by CLEC regardless of CLEC's ability or inability to collect from its End Users for such services.
- 8.8 If CLEC does not wish to be responsible for payment of charges for collect, third number billed, toll and information services (for example, 900) calls, it must order the appropriate blocking for lines provided under this Appendix and pay any applicable charges. It is the responsibility of CLEC to order the appropriate toll restriction or blocking on lines resold to End Users. CLEC acknowledges that blocking is not available for certain types of calls, including 800, 888, 411 and Directory Assistance Express Call Completion. Depending on the origination point, for example, calls originating from correctional facilities, some calls may bypass blocking systems. CLEC acknowledges all such limitations and accepts all responsibility for any charges associated with calls for which blocking is not available and any charges associated with calls that bypass blocking systems.
- 8.9 CLEC shall be responsible for modifying and connecting any of its systems with SBC-13STATE-provided interfaces as described in this Appendix and Appendix OSS.
- 8.10 CLEC shall be responsible for providing to its End Users and to SBC-13STATE a telephone number or numbers that CLEC's End Users may use to contact CLEC in the event that the End User desires a repair/service call.
- 8.10.1 In the event that CLEC's End Users contact SBC-13STATE with regard to repair requests, SBC-13STATE shall inform such End Users to call CLEC and may provide CLEC's contact number.
- 8.11 CLEC acknowledges and agrees that, in the event CLEC makes any "CLEC Change" as that term is defined in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached, CLEC shall comply with the provisions set forth in Section 4.10 of the General Terms and Conditions of the Agreement to which this Appendix is attached as though set forth herein.
- 8.12 CLEC will provide forecasts to SBC-13STATE every January and July using the SBC-13STATE network information form, or a format mutually agreed to by the Parties. These written forecasts will be based on CLEC's best estimates and will include all resale products CLEC will be ordering within the forecast period.
9. **APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**
- 9.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions

of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

## **APPENDIX SS7**

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**APPENDIX SS7**  
**APPENDIX FOR THE PROVISION OF SS7 SERVICE**

**1. INTRODUCTION**

- 1.1 This Appendix sets forth the terms and conditions for non-discriminatory access to the Common Channel Signaling/Signaling System 7 (CCS/SS7) signaling network provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC. CCS/SS7 is comprised of certain network elements, including Dedicated Signaling Links, Signaling Link Transport and Signaling Transfer Points (STP). In addition to such network elements, this Appendix provides for CCS/SS7 functionality and translations to support SS7 based services and applications.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, SBC-13STATE means the applicable above listed ILECs doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.4 As used herein, SBC-12STATE means the applicable above listed ILECs doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.
- 1.5 As used herein, SBC-7STATE means the applicable above listed ILECs doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.
- 1.6 As used herein, SBC-2STATE means the applicable above listed ILECs doing business in California and Nevada.
- 1.7 As used herein, SBC-SWBT means the applicable above listed ILECs doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.
- 1.8 As used herein, SBC-AMERITECH means the applicable above listed ILECs doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

- 1.9 As used herein, PACIFIC means the applicable above listed ILECs doing business in California.

## 2. SERVICE DESCRIPTION

- 2.1 SNET does not offer access to the SS7 signaling network under this agreement. Rather, SS7 is available as described in DPUC ordered CT Access Service Tariff Section 18.2.8. SS7 interconnection arrangements between SNET and CLEC will be on an individual case basis (ICB) due to the individual architectures of both CLEC and SNET signaling networks and unique requirements of the individual parties.
- 2.2 SS7 Transport
- 2.2.1 SS7 as defined in this Appendix above, provides for the transporting of call setup (i.e. ISUP) signaling to each end-office subtended from the tandem in the LATA in which the interconnection occurs as outlined in this Agreement. SS7 Transport of SS7 Global Access or SS7 Access as defined in the SBC-12STATE below outlines the requirements by for interLATA signaling.
- 2.2.2 SS7 Transport provides for the routing and screening of SS7 messages from an SBC-7STATE pair of STPs (i.e., a mated pair) to another SBC-7STATE pair of STPs. In the SBC-AMERITECH, due to the fact that state gateway STPs are not interconnected, SS7 Transport provides for the routing and screening of SS7 messages from a SBC-AMERITECH pair of designated Gateway STPs (i.e., a mated pair) to another SBC-AMERITECH pair of STPs within the same state only. The screening of messages provides for CLEC designation of signaling points associated with the CLEC and controls which messages may be allowed by the SBC-12STATE STP pairs. The routing of messages provides for the transfer of a complete message between signaling links, and for a Global Title Translation (GTT) of the message address, if needed.
- 2.2.3 SS7 Transport provides routing of messages for all parts of the SS7 protocol. These messages may support other applications and services such as, for example, CLASS services, Message Waiting services, Toll Free Database services, Line Information Data Base (LIDB) Services, Calling Name (CNAM) Database services, Advanced Intelligent Network (AIN) services and Telecommunications Industry Association Interim Standard-41 (IS-41) services. SS7 Transport will route messages to the global title address or to the signaling point code address of the message based on the translation information of SBC-12STATE's STP.

## 2.3 Dedicated Signaling Links

2.3.1 Dedicated Signaling Links provide interconnection to SBC-12STATE's signaling network. Each signaling link is a set of dedicated 56Kbps (or higher speed) transmission paths between CLEC STPs or switches and the SBC-12STATE STP mated pair. The CLEC designated Signaling Points of Interconnection (SPOI) are at SBC-7STATE's STP, an SBC-7STATE serving wire center or are collocated in an SBC-12STATE wire center. In the SBC-AMERITECH the SPOI is always collocated in the SBC-AMERITECH STP serving office. This means of collocation is required in the SBC-AMERITECH for access to the SBC-AMERITECH STP. The links are fully dedicated to the use of CLEC and provide the screening and routing usage for the SBC-12STATE STP to which the link is connected. Dedicated Signaling Links are available to CLECs for their use in furnishing SS7-based services or applications to their end users or other users of SS7 signaling information.

## 2.4 Dedicated Signaling Links include the following elements:

### 2.4.1 SS7 Link Cross Connect

2.4.1.1 The SS7 Link Cross Connect provides a DS-0 or DS1 connection in the SBC-12STATE STP building and connects the STP Port Termination to the CLEC SPOI.

### 2.4.2 STP Port Termination

2.4.2.1 The STP Port Termination is the physical termination of the signaling link (i.e. 56 kbps circuit) at an SBC-12STATE STP. A STP Port Termination is used for each 56 kbps SS7 Link Cross Connect terminated at a SBC-12STATE STP.

### 2.4.3 STP Access Link

2.4.3.1 The STP Access Link provides a 56-kilobit per second digital facility when CLEC requires an interoffice facility to connect from the CLEC SPOI to the STP building location.

2.5 The CLEC shall provide the portion of the signaling link from the CLEC premises within the LATA to the SBC-12STATE STP location or the CLEC SPOI. CLEC shall identify the DS1 or channel of a DS1 that will be used for the signaling link.

2.6 CLEC shall identify to SBC-12STATE the facility and channel to which the SS7 Link Cross Connect shall connect. If the facility does not terminate in the STP location SBC-12STATE shall provide a transport facility referred to as the STP

Access Link. The STP Access Link will connect to the DS-0 cross connect at the STP location.

- 2.7 When CLEC uses an alternative DS1 facility or arranges, or agrees to allow, a physical degree of diversity or performance that is not in accordance with the specifications of Telcordia technical publication, GR-905-CORE, CLEC acknowledges that the performance and reliability of the SS7 protocol may be affected and the performance and reliability standards described in GR-905-CORE may be disqualified.
- 2.8 Dedicated Signaling Links are subject to SBC-12STATE compatibility testing and certification requirements pursuant to the Network Operations Forum Reference Document, GR-905-CORE and SBC-12STATE Technical Publication, TP76638. In the SBC-AMERITECH Technical Publication AM-TR-OAT-000069 will apply in addition to the documents referenced above. In SBC-2STATE PUB L-780023-SBC-2STATE may be substituted for TP76638 and first interconnections to PACIFIC's signaling network per CLEC and per signaling point type of equipment will require completion of PACIFIC's CCS/SS7 interconnection questionnaire. Each individual set of links from CLEC switch to SBC-12STATE STP will require a pre ordering meeting to exchange information and schedule testing for certification by SBC-12STATE.
- 2.9 Dedicated Signaling Links Technical Requirements
- 2.9.1 Unbundled Dedicated Signaling Links will perform in the following two ways:
- 2.9.1.1 as an "A-link", which is a connection between a switch and a home signaling transfer point (STP) mated pair; and
- 2.9.1.2 as a "B-link" or "D-link," which is an interconnection between STPs in different signaling networks.
- 2.9.2 When CLEC provides its own switch or STP, CLEC will provide DS1 (1.544 Mbps) interfaces at the CLEC-designated SPOIs. DS1 transport to the SPOI can be provided for, as previously indicated, via existing transport facilities or through CLEC purchase of an SBC-12STATE dedicated transport facility, previously referred to as the "Access Connection". Each 56 Kbps transmission path will appear as a DS0 channel on the DS1 interface.
- 2.9.3 In each LATA in which CLEC desires Dedicated Signaling Links for interconnection to the SBC-12STATE SS7 Signaling Network, CLEC must purchase dedicated signaling links to each STP of a mated pair of STPs.

- 2.9.4 CLEC assumes the responsibility to ensure diverse routing of CLEC signaling links from CLEC switch to CLEC SPOI. SBC-12STATE will provide the same amount of diversity as it provides to itself in terms of diverse routing of interoffice facilities, should such facilities be necessary.
- 2.9.5 When CLEC requests that SBC-12STATE add a Signaling Point Code (SPC), CLEC will identify to SBC-12STATE the SPCs associated with the CLEC set of links and will pay a non-recurring charge per STP pair at the rates set forth in Appendix PRICING UNE – Schedule of Prices, “Point Code Addition”. This rate element will not apply in SBC-2STATE.
- 2.9.6 CLEC will notify SBC-12STATE in writing thirty (30) days in advance of any material change in CLEC’s use of such SS7 signaling network, including but not limited to any change in CLEC SS7 Dedicated Signaling Links, SS7 Transport and/or STP.

2.10 Signaling Transfer Points (STPs)

- 2.10.1 The STP element is a signaling network function that includes all of the capabilities provided by the STP switches which enable the exchange of SS7 messages between switching elements, database elements and signaling transfer point switches via associated signaling links. STP includes the associated link interfaces.
- 2.10.2 Use of the STP routes signaling traffic generated by action of CLEC to the destination defined by PACIFIC’s signaling network, excluding messages to and from an SBC-7STATE local switching unbundled network element. Integrated services digital network user (ISUP) and Translational Capabilities Application Part (TCAP) signaling traffic addressed to SPs associated with CLEC set of links will be routed to CLEC.
- 2.10.3 SS7 Transport will apply to SS7 messages transported on behalf of CLEC from a SBC-12STATE designated STP pair to a to a SBC-12STATE STP pair located in a different LATA. In the SBC-AMERITECH this arrangement will only be provided for STPs located in the same state. In the SBC-7STATE, the rate, per octet, will apply to octets comprising ISUP and TCAP messages. In the SBC-AMERITECH the Signal Switching and Signal Transport rates will apply to ISUP and TCAP messages. In the SBC-2STATE, SS7 transport is not available. However, transit signaling provides the ability for an interconnecting network (ICN) to pass signaling information through the SBC-2STATE network to a third party without requiring a trunking connection by a third party with SBC-2STATE.
- 2.10.4 In such instance as CLEC utilizes SBC-12STATE’s Local Switching Network Element, CLEC does not separately order SS7 signaling under this

method. CLEC will be charged for the use of the SBC-12STATE SS7 signaling on a per call basis.

## 2.11 STP Technical Requirements

2.11.1 STPs will provide signaling connectivity to the following network elements connected to the SBC-12STATE SS7 network: SBC-12STATE Local Switching or Tandem Switching; SBC-12STATE Service Control Points/Call Related Databases; Third-Party local or tandem switching systems; and Third-party-provided STPs.

2.11.2 The Parties will indicate to each other the signaling point codes and other screening parameters associated with each Link Set ordered by CLEC at the SBC-12STATE STPs, and where technically feasible, each Party will provision such link set in accordance with these parameters. CLEC may specify screening parameters so as to allow transient messages to cross the SBC-12STATE SS7 Network. The Parties will identify to each other the GTT type information for message routing. CLEC will pay a non-recurring charge when CLEC requests SBC-12STATE add GTT type information for message routing, in connection with its use of unbundled signaling.

## 2.12 Interface Requirements

2.12.1 SBC-12STATE will provide STP interfaces to terminate A-links, B-links, and D-links.

2.12.2 CLEC will designate the SPOI for each link. CLEC will provide a DS1 or higher rate transport interface at each SPOI. SBC-12STATE will provide intraoffice diversity to the same extent it provides itself such diversity between the SPOIs and the SBC-12STATE STPs.

2.12.3 SBC-12STATE will provide intraoffice diversity to the same extent it provides itself such diversity between the SPOIs and the SBC-SWBT STPs.

## 3. MANNER OF PROVISIONING

3.1 The following describes the manner of provisioning for SS7 services. Each Party will work cooperatively with the other Party and will each provide knowledgeable personnel in order to provision, test and install SS7 Service in a timely fashion.

### 3.2 SS7 Transport

3.2.1 CLEC shall use SS7 Transport subject to the screening and routing information of the SBC-12STATE STPs. SBC-12STATE shall provide information to CLEC on the routes and signaling point codes served by the

SBC-12STATE STPs. SS7 Transport shall route ISUP messages for the purpose of establishing trunk voice paths between switching machines.

- 3.2.2 SS7 Transport shall route TCAP queries when feasible pursuant to the SS7 Protocol to the SBC-12STATE "regional" STP pair that directly serves the database of TCAP message. SS7 Transport shall route TCAP responses from a SBC-12STATE "regional" STP pair to another SBC-12STATE STP pair.
- 3.2.3 SS7 Transport provides a signaling route for messages only to signaling points to which SBC-12STATE has a route. SS7 Transport does not include the provision of a signaling route to every possible signaling point. When SBC-12STATE does establish a route to a signaling point in a mated pair of STPs, the route may not be available to other SBC-12STATE pairs of STPs, until ordered. When SBC-12STATE or CLEC, pursuant to a service order, arranges to establish a route to a signaling point, such route to the other signaling point or other signaling network will be used by all signaling points within, and connected to, the SBC-12STATE signaling network pursuant to the standard requirements of the SS7 protocol.
- 3.3 Disputes concerning the association of a signaling point among specific link sets associated with a SBC-12STATE mated STP will be resolved by consultation with the signaling point owner, as defined in the Local Exchange Routing Guide (LERG), Section 1, assignment of SPC.
- 3.4 Dedicated Signaling Links
  - 3.4.1 CLEC shall designate the signaling points and signaling point codes associated with CLEC. CLEC shall provide such information to SBC-12STATE to allow SBC-12STATE to translate SBC-12STATE STPs. The information shall define the screening and routing information for the signaling point codes of CLEC and may include global title address, translation type and subsystem designations as needed.
  - 3.4.2 Signaling links from SBC-12STATE mated pairs of STPs shall connect to CLEC premises (including collocation locations) within the same LATA. A set of links can be either:
    - 3.4.2.1 "A" Link Sets from CLEC's Signaling Point (SP)/Service Switching Point (SSP). A minimum of two links will be required, one from the SP/SSP to each STP; or,
    - 3.4.2.2 "B" Link Sets from CLEC's STPs that are connected to SBC-12STATE's mated pair of STPs. A minimum of four links will be required (i.e. a "quad") between the two pairs of STPs. (This same arrangement is sometimes referred to as a set of "D" links.)

- 3.4.3 A STP Port Termination and SS7 Link Cross Connect is required for each 56-kbps access link utilized for the Service. STP locations are set forth in the National Exchange Carrier Association, Inc. (NECA) Tariff FCC No. 4.
- 3.4.4 A pre-order meeting will define the SBC-12STATE facility availability and the degree of diversity in both the SBC-12STATE physical network and the CLEC physical network from signaling point to signaling point for the link.
- 3.4.5 When CLEC requires a STP Access Link, CLEC and SBC-12STATE shall jointly negotiate the degree of diversity provided among and between multiple dedicated signaling links. The negotiation shall consider the requirements of the SS7 standard protocol, the degree of diversity available in each network and the possible alternatives.
- 3.4.6 All applicable signaling point codes for each signaling link must be installed at each of SBC-12STATE's interconnecting STPs.
- 3.4.7 Call set-up times may be adversely affected when CLEC, using SS7 signaling, employs Intermediate Access Tandems (IATs) in its network. SBC-12STATE makes no warranties with respect to call set-up times when multiple STP pairs are involved or when the signaling traffic is exchanged between two non-SBC-12STATE signaling points.
- 3.4.8 Provisioning of the SS7 Service is in accordance with SBC-7STATE TP76638 SBC-AMERITECH AM-TR-OAT-000069 and GR-905-CORE, as amended or SBC-2STATE PUB L780023-SBC-2STATE.

### 3.5 Use of the STP

- 3.5.1 When CLEC orders SBC-12STATE unbundled Local Switching, the use of the STP shall apply. No order or provisioning by CLEC is needed. The SBC-12STATE Local Switch will use the SBC-12STATE SS7 signaling network.

## 4. RESPONSIBILITIES OF SBC-12STATE

- 4.1 SBC-12STATE shall manage the network and, at its sole discretion, apply protective controls. Protective controls include actions taken to control or minimize the effect of network failures or occurrences, which include, but are not limited to, failure or overload of SBC-12STATE or CLEC facilities, natural disasters, mass calling or national security demands.
- 4.2 SBC-12STATE shall determine the GTT route for messages routed to GTT, which are associated with SBC-12STATE signaling points.



- 4.3 SBC-12STATE shall define regional functions and local functions of its STPs. SBC-12STATE will route ISUP messages within the SBC-12STATE signaling network, subject to technical feasibility. Capacity limitations shall define a temporary technical infeasibility until the capacity limit can be resolved.
- 4.4 SBC-12STATE shall route messages generated by the action of CLEC throughout the SBC-12STATE signaling network as specified within this Appendix. The content of the messages is for the use of signaling points of origination and destination. SBC-12STATE will not use any information within messages for any purpose not required by or related to the use of the SBC-12STATE signaling network. SBC-12STATE will not divulge any message or any part of messages generated by CLEC to any other party, except as required to manage the SBC-12STATE signaling network or as may be required by law.

## 5. RESPONSIBILITIES OF CLEC

- 5.1 CLEC shall provision the signaling links at CLEC's premises and from CLEC's premises to SBC-7STATE's STP location in a diverse, reliable and technically feasible manner. CLEC shall identify to SBC-12STATE the SPC(s) associated with the CLEC set of links.
- 5.2 CLEC shall identify to SBC-12STATE the GTT information for messages that route to CLEC.
- 5.3 When routing messages addressed to an SBC-12STATE Subsystem Number (SSN), CLEC shall use the SBC-12STATE defined SSN designation of the SBC-12STATE mated STP pair to which the message is routed.
- 5.4 CLEC shall transfer Calling Party Number Parameter information unchanged, including the "privacy indicator" information, when ISUP Initial Address Messages are interchanged with the SBC-12STATE signaling network.
- 5.5 CLEC shall furnish to SBC-12STATE, at the time the SS7 Service is ordered and annually thereafter, an updated three (3) year forecast of usage of the SS7 Signaling network. The forecast shall include total annual volume and busy hour busy month volume. SBC-12STATE shall utilize the forecast in its own efforts to project further facility requirements.
- 5.6 CLEC shall inform SBC-12STATE in writing thirty (30) days in advance of any change in CLEC's use of such SS7 Service which alters by ten percent (10%) for any thirty (30) day period the volume of signaling transactions by individual SS7 service that are planned by CLEC to be forwarded to SBC-12STATE's network. CLEC shall provide in said notice the reason, by individual SS7 service, for the volume change.

## 6. BONAFIDE REQUEST PROCESS

- 6.1 Any request for SS7 service not addressed within this Appendix may be submitted to SBC-12STATE via the Bonafide Request ("BFR") process set forth in Appendix UNE.

## 7. DESCRIPTION OF RATE ELEMENTS SBC-AMERITECH

- 7.1 There are three types of charges that apply for SS7 Access. They are recurring, usage and nonrecurring charges. Recurring and nonrecurring charges apply for each port that is established on a STP. Usage charges apply for each Initial Address Message (IAM) or TCAP (excluding LIDB Access Service, 800 Access Service TCAP messages and LNP Database Access Query TCAP messages) message that is switched by the local STP and transported to an SBC-AMERITECH end office or for each IAM and TCAP message that is switched by the local STP in a hubbing arrangement.
- 7.2 Nonrecurring charges apply for the establishment of Originating Point Codes (OPC) and Global Title Address (GTA) Translations. An OPC charge applies for each OPC established, as well as each OPC added or changed subsequent to the establishment of STP Access. The OPC charge applies on a per service basis. A GTA Translation charge applies for each service or application (excluding LIDB Access Service and 800 Carrier-ID-Only Service) that utilizes TCAP messages. A GTA Translation charge also applies for each service (excluding LIDB Access Service and 800 Carrier-ID-Only Service) added or changed subsequent to the initial establishment of STP Access.
- 7.3 Signal Formulation
- 7.3.1 An IAM Formulation usage charge will be assessed for each IAM message formulated at the SBC-AMERITECH tandem for CLEC to SBC-AMERITECH terminated calls.
- 7.4 Signal Transport
- 7.4.1 An IAM Signal Transport usage charge will also be assessed for each IAM message that is transported from the local STP to the SBC-AMERITECH end office for terminating traffic. A TCAP Signal Transport usage charge will be assessed for each TCAP message that is transported from the local STP to the SBC-AMERITECH end office (excluding LIDB and 800 Access Service).
- 7.5 Signal Switching
- 7.5.1 An IAM Signal Switching usage charge will be assessed for each IAM message that is switched by the local STP for each IAM messages that is

switched for direct routed terminating traffic. A TCAP Signal Switching usage charge will be assessed for each TCAP message that is switched by the local STP termination of non-call associated signaling messages (excluding LIDB and 800 Access Service).

7.6 Signal Tandem Switching

- 7.6.1 An IAM Signal Tandem Switching usage charge will be assessed for an IAM message that is switched by an SBC-AMERITECH STP and transported to an end office for tandem routed terminating traffic. When Signal Tandem Switching usage charges are assessed, Signal Switching and Signal Transport charges do not apply, except for SS7 Transport.

8. **DESCRIPTION OF RATE ELEMENTS SBC-7STATE**

- 8.1 The following rate elements apply to SBC-7STATE SS7 Service:

8.2 SS7 Transport

- 8.2.1 SS7 Transport shall be measured per octet of information screened and routed.
- 8.2.2 CLEC shall pay SS7 Transport Per Octet rate element for the screening and routing of messages by each additional SBC-7STATE STP pair. A usage rate applies per octet generated by action of CLEC.
- 8.2.3 SS7 Transport is not available in the SBC-2STATE.

8.3 Dedicated Signaling Links

8.3.1 SS7 Link Cross Connect

- 8.3.1.1 CLEC shall pay the DS-0 or DS-1 rate for the SS7 Link Cross Connect at the STP location for each Dedicated Signaling Link. Rates are per DS-0 and DS-1 bandwidth and per connection to unbundled dedicated facility or connection to a collocation cage. Rates are per month and nonrecurring installation per first or additional cross connects ordered and shall apply on a per order basis.

8.3.2 STP Port Termination

- 8.3.2.1 CLEC shall pay the STP Port Termination rate element for each termination of the SS7 Link Cross Connect at the SBC-7STATE

STP. One STP Port Termination must be installed at SBC-7STATE's interconnecting STP for each Dedicated Signaling Link.

8.3.2.2 There are two charges that apply to the STP Port Termination, i.e., a fixed recurring monthly rate per port termination and a nonrecurring installation charge per port.

8.3.3 STP Access Link

8.3.3.1 CLEC shall pay the STP Access Link rate element for each STP Access Link when the STP Access Link is provided. The charge includes a fixed rate per month plus a rate per mile per month.

8.4 Signaling Point Code Addition

8.4.1 CLEC shall pay the Signaling Point Code Addition rate element for the establishment and translation of each applicable CCS network signaling point code at a SBC-7STATE STP. CLEC shall pay a nonrecurring charge per SPC established at each STP.

8.5 Global Title Translation (GTT) Addition

8.5.1 CLEC shall pay the GTT Addition rate element for the establishment of CLEC's GTA, translation type or subsystem information in the SBC-7STATE STP translations. CLEC shall pay a nonrecurring charge per GTT established at each STP.

8.6 Use of the STP Per Call

8.6.1 CLEC shall pay the Use of the STP Per Call rate element for Use of the SBC-7STATE STP. The rate shall apply for each call originated by CLEC subscribers using the SBC-7STATE Local Switching Network Element. The rate is based on an assumed mean quantity of 200 octets of signaling used for each originated call times the STP Transport rate element.

8.6.2 The Use of the STP Per Call is a surrogate for STP Transport and Dedicated Signaling Links when CLEC uses the SBC-7STATE Local Switching network element.

9. **APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

9.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without

limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

**APPENDIX FOR ACCESS**  
**TO SBC COMMUNICATION INC.'S STRUCTURE**  
**(POLES, CONDUITS, AND RIGHTS OF WAYS)**

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## APPENDIX FOR ACCESS TO SBC COMMUNICATION INC.'S STRUCTURE (POLES, CONDUITS, AND RIGHTS OF WAYS)

### 1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Poles provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.3 As used herein, SBC-13STATE means the above listed ILECs doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin. SBC will be used throughout this document in lieu of SBC-13STATE.
- 1.4 As used herein, PACIFIC means the ILEC doing business in California.

### 2. DEFINITIONS

- 2.1 Definitions in general. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 2.1 to 2.14 except as the context otherwise requires.
- 2.2 Conduit. The term "conduit" refers to tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. As used in this Appendix, the term "conduit" refers only to conduit structures (including ducts, manholes and handholes) and space within those structures and does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.

- 2.3 Conduit system. The term "conduit system" refers to any combination of ducts, conduits, manholes, and handholes joined to form an integrated whole. As used in this Appendix, the term "conduit system" does not include (a) cables and other telecommunications equipment located within conduit structures or (b) central office vaults, controlled environment vaults, or other SBC-13STATE structures (such as huts and cabinets) which branch off from or are connected to SBC-13STATE's conduit.
- 2.4 Duct. The term "duct" refers to a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other equipment. As used in this Appendix, the term "duct" includes "inner ducts" created by subdividing a duct into smaller channels, but does not include cables and other telecommunications equipment located within such ducts.
- 2.5 Handhole. The term "handhole" refers to a structure similar in function to a manhole, but which is too small for personnel to enter. As used in this Appendix, the term "handhole" refers only to handholes which are part of SBC-13STATE's conduit system and does not refer to handholes which provide access to buried cables not housed within SBC-13STATE ducts or conduits. As used in this Appendix, the term "handhole" refers only to handhole structures owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment located within handhole structures.
- 2.6 Occupancy Permit. The term "occupancy permit" refers to a written instrument confirming that SBC-13STATE has granted the structure access request of Attaching Party or a third party for access to pole, duct, conduit, or right-of-way space.
- 2.7 Maintenance Duct. The term "maintenance duct" generally refers to a full-sized duct (typically three inches in diameter or larger) for use, on a short-term basis, for maintenance, repair, or emergency restoration activities. The term "maintenance duct" does not include ducts and conduits extending from an SBC-13STATE manhole to customer premises. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.
- 2.8 Make-ready work. The term "make-ready work" refers to all work performed or to be performed to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and related facilities for the requested occupancy or attachment of Attaching Party's facilities.
- 2.9 Manhole. The term "manhole" refers to an enclosure, usually below ground level and entered through a hole on the surface, which personnel may enter and use for the purpose of installing, operating, and maintaining

facilities in ducts or conduits which are parts of SBC-13STATE's conduit system. As used in this Appendix, the term "manhole" does not include cables and other telecommunications equipment located within manhole structures.

- 2.10 Other User. The term "Other User" refers to entities, other than the Attaching Party, with facilities on an SBC-13STATE pole, duct, conduit or right-of-way to which the Attaching Party has obtained access. Other Users may include SBC-13STATE, other attaching parties, municipalities or other governmental entities, and electric utilities (which may own interests in SBC-13STATE's poles, ducts, conduits or rights-of-ways).
- 2.11 Overlashing. The term "Overlashing" refers to the practice of placing an additional cable by lashing such cable with spinning wire over an existing cable and strand.
- 2.12 Pole. The term "pole" refers to poles (and associated anchors) which are owned or controlled by SBC-13STATE and does not include cables and other telecommunications equipment attached to pole structures.
- 2.13 Rights-of-way. The term "rights-of-way" refers to SBC-13STATE owned or controlled legal rights to pass over or through property of another party and used by SBC-13STATE for its telecommunications distribution system. For purposes of this Appendix, "rights-of-way" includes property owned by SBC-13STATE and used by SBC-13STATE for its telecommunications distribution facilities. Rights-of-way does not include:
- 2.13.1 cables and other telecommunications equipment buried or located on such rights-of-way,
  - 2.13.2 public rights of way (which are owned by and subject to the control of governmental entities), or
  - 2.13.3 any space which is owned and controlled by a third-party property owner and occupied by SBC-13STATE with permission from such owner rather than as a matter of legal right.
- 2.14 Structure. The term "Structure" refers collectively to poles, ducts, conduits and rights-of-way.

### 3. SCOPE OF APPENDIX

- 3.1 This Appendix establishes the rates, terms, conditions, and procedures by which SBC-13STATE shall provide non-discriminatory access to SBC-

13STATE's Structure. Separate tariffs, appendix, or agreements shall govern Attaching Party's access, if any, to the following facilities which require special security, technical, and construction arrangements outside the scope of this Appendix:

- 3.1.1 SBC-13STATE's central office vaults and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from SBC-13STATE's central offices;
  - 3.1.2 controlled environment vaults (CEVs), huts, cabinets, and other similar outside plant structures and ducts and conduits which serve no purpose other than to provide a means of entry to and exit from such vaults, huts, cabinets, and structures;
  - 3.1.3 ducts and conduits located within buildings owned by SBC-13STATE; and
  - 3.1.4 ducts, conduits, equipment rooms, and similar spaces located in space leased by SBC-13STATE from third-party property owners for purposes other than to house cables and other equipment in active service as part of SBC-13STATE's network distribution operations.
- 3.2 No Transfer of Property Rights to Attaching Party. Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall create or vest (or be construed as creating or vesting) in either party any right, title, or interest in or to any real or personal property owned by the other.
- 3.3 No Effect on SBC-13STATE's Right to Abandon, Convey or Transfer Structure Nothing contained in this Appendix, or any occupancy permit subject to this Appendix, shall in any way affect SBC-13STATE's right to abandon, convey, or transfer to any other person or entity SBC-13STATE'S interest in any of SBC-13STATE'S Structure. SBC-13STATE shall give Attaching Party at least 60 days written notice prior to abandoning, conveying, or transferring any Structure to which Attaching Party has already attached its facilities, or any Structure on which Attaching Party has already been assigned space. The notice shall identify the transferee, if any, to whom any such pole, duct, conduit, or right-of-way is to be conveyed or transferred.

#### 4. EFFECTIVE DATE, TERM, AND ELECTIVE TERMINATION

- 4.1 Effective Date. This Appendix shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, or, if this Appendix has been entered into as an appendix, attachment, or exhibit to an interconnection Appendix between the parties, the date of approval by the State Commission of the interconnection Appendix, whichever date first occurs.
- 4.2 Initial Term. Unless sooner terminated as herein provided, the initial term of this Appendix shall run from the effective date until the end of the calendar year which includes the effective date. In the event this Appendix is entered into as a part of an Interconnection Appendix, this Appendix shall terminate upon the termination of the Interconnection Appendix of which this is apart.
- 4.3 Automatic Renewal. Unless sooner terminated as herein provided, this Appendix shall be automatically renewed for successive one-year terms beginning on the first day of each calendar year after the effective date, or in the same fashion as the Interconnection Appendix renews, if a part of the Interconnection Appendix.
- 4.4 Elective Termination. Either party may terminate this Appendix by giving the other party at least six months prior written notice as provided in this section. The notice of termination shall state the effective date of termination, which date shall be no earlier than the last to occur of the following dates: the last day of the current term of this Appendix or six months after the date the notice is given.
- 4.5 Elective Termination by SBC-13STATE. Attaching Party shall, within 60 days after the effective date of the elective termination by SBC-13STATE, either initiate negotiations for continued access to SBC-13STATE's poles, ducts, conduits, and rights-of-way or remove its facilities in accordance with the provisions of Section 28 of this Appendix.
- 4.6 Effect of Elective Termination. Elective termination of this Appendix by Attaching Party, as permitted under Section 4 of this Appendix, shall not affect Attaching Party's liabilities and obligations incurred under this Appendix prior to the effective date of termination and shall not entitle Attaching Party to the refund of any advance payment made to SBC-13STATE under this Appendix. Elective termination of this Appendix by SBC-13STATE shall not affect SBC-13STATE's obligations to afford access to SBC-13STATE's poles, ducts, conduits, and rights-of-way owned or controlled by SBC-13STATE as required by the Pole Attachment Act, the Telecommunications Act of 1996, and other applicable laws, regulations, and commission orders.

## 5. GENERAL PROVISIONS

- 5.1 Entire Appendix. This Appendix, together with the interconnection Appendix, if any, of which this Appendix is a part, and the Guidelines for Access to SBC-13STATE Structure, attached hereto and incorporated herein by reference, sets forth the entire understanding and Appendix of the parties.
- 5.2 Prior Agreements Superseded. This Appendix supersedes all prior Agreements and understandings, whether written or oral, between Attaching Party and SBC-13STATE relating to the placement and maintenance of Attaching Party's facilities on and within SBC-13STATE's poles, ducts, and conduits within this State.
- 5.3 Amendments Shall Be in Writing. Except as otherwise specifically provided to the contrary by other provisions of this Appendix, the terms and conditions of this Appendix shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.
- 5.4 Survival of Obligations. Any liabilities or obligations of either party for acts or omissions prior to the termination of this Appendix, any obligations of either party under provisions of this Appendix relating to confidential and proprietary information, indemnification, limitations of liability, and any other provisions of this Appendix which, by their terms, are contemplated to survive (or be performed after) termination of this Appendix, will survive the termination of this Appendix.
- 5.5 Multiple Counterparts. This Appendix may be executed in multiple counterparts.
- 5.6 Effect on Licenses or Occupancy Permits Issued Under Prior Agreements. All currently effective pole attachment and conduit occupancy permits granted to Attaching Party shall, on the effective date of this Appendix, be subject to the rates, terms, conditions, and procedures set forth in this Appendix.
- 5.7 Force Majeure. Except as otherwise specifically provided in this Appendix, neither party will be liable for any delay or failure in performance of any part of this Appendix caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the party claiming excusable delay or other failure to perform;

provided, however, that Force Majeure will not include acts of any governmental authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs, the party whose performance fails or is delayed because of such Force Majeure condition will give prompt notice to the other party, and, upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

- 5.8 Severability. If any article, section, subsection, or other provision or portion of this Appendix is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Appendix as to either party, the invalidity of such provision shall not render this entire Appendix unenforceable and this Appendix shall be administered as if it did not contain the invalid provision.
- 5.9 Choice of Law. Except to the extent that federal law controls any aspect of this Appendix, the validity of this Appendix, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties will be governed by the laws of this State, applied without regard to the provisions of this State's laws relating to conflicts-of-laws.
- 5.10 Changes in the Law. The parties agree to negotiate in good faith changes to this Appendix to conform to changes applicable law pertaining to access to poles, ducts, conduits and rights-of-way, including the Pole Attachment Act.
- 5.11 The parties shall at all times observe and comply with, and the provisions of this Appendix are subject to, all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

## 6. **DISCLAIMER OF WARRANTIES**

- 6.1 SBC-13STATE MAKES NO REPRESENTATIONS AND DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, THAT SBC-13STATE'S POLES, DUCTS, CONDUITS AND WARRANTIES ARE SUITABLE FOR THE ATTACHING PARTY'S INTENDED USES OR ARE FREE FROM DEFECTS. THE ATTACHING PARTY SHALL IN EVERY INSTANCE BE RESPONSIBLE TO DETERMINE THE ADEQUACY OF SBC-13STATE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY FOR THE ATTACHING PARTY'S INTENDED USE.

## 7. DISPUTE RESOLUTION

- 7.1 In the event that this Appendix is a part of an Interconnect Agreement between the parties, the dispute resolution provisions of the Interconnection Agreement shall apply to disputes under this Appendix.

## 8. INDEMNIFICATION

- 8.1 Definitions. The term "Claims" as used in Section 8 shall mean any suit, claim, demand, loss, damage, liability, fee, fine, penalty, or expense, of every kind and character.

- 8.2 Indemnities Excluded. Except as otherwise specifically provided in this article, neither party (as an "indemnifying party") shall be required to indemnify or defend the other party (as an "indemnified party") against, or hold the indemnified party harmless from, any Claims arising out of:

8.2.1 any breach by the indemnified party of any provision of this Appendix or any breach by the indemnified party of the parties' interconnection Appendix, if any;

8.2.2 the violation of any law by any employee of the indemnified party or other person acting on the indemnified party's behalf;

8.2.3 willful or intentional misconduct or gross negligence committed by any employee of the indemnified party or by any other person acting on the indemnified party's behalf; or

8.2.4 any negligent act or acts committed by any employee of the indemnified party or other person acting on the indemnified party's behalf, if such negligent act or acts are the sole producing cause of the injury, loss, or damage giving rise to the Claim for which indemnity is requested.

- 8.3 Workplace Injuries. Except as expressly provided in this Appendix to the contrary, each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any injury, loss, or damage suffered by any person, which arises out of or in connection with the personal injury or death of any employee of the indemnifying party (or other person acting on the indemnifying party's behalf) if such injury or death results, in whole or in part, from any occurrence or condition on, within, or in the vicinity of SBC-13STATE's Structure.



- 8.4 Other Claims Brought Against Either Party by Employees and Other Persons Acting on the Other Party's Behalf. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3 above) made, brought, or sought against the indemnified party by any employee, contractor, or subcontractor of the indemnifying party or by any other person acting on the indemnifying party's behalf.
- 8.5 THE INDEMNIFYING PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.3-8.4 SHALL ARISE EVEN IF THE INJURY, SICKNESS, DISEASE, OR DEATH WAS ATTRIBUTABLE IN PART TO NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY.
- 8.6 Claims Brought Against Either Party by Vendors, Suppliers and Customers of the Other Party. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims (other than workplace injury claims subject to Section 8.3, or other claims subject to Section 8.4) made, brought, or sought against the indemnified party by any vendor, supplier, or customer of the indemnifying party.
- 8.7 Injuries to Third Parties and Third party Property Owners Resulting from the Parties' Conduct. Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with the personal injury or death of any third party or physical damage to real or personal property owned by a third party, arising, in whole or in part, out of or in connection with the conduct of employees of the indemnifying party or other persons acting on the indemnifying party's behalf.
- 8.8 Indemnification for Environmental Claims.
- 8.8.1 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the violation or breach, by any employee of the indemnifying party or other person acting on the indemnifying party's behalf, of
- 8.8.1.1 any federal, state, or local environmental statute, rule, regulation, ordinance, or other law or
- 8.8.1.2 any provision or requirement of this Appendix dealing with hazardous substances or protection of the environment.

- 8.8.2 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the release or discharge, onto any public or private property, of any hazardous substances, regardless of the source of such hazardous substances, by any employee of the indemnifying party, or by any person acting on the indemnifying party's behalf, while present on, within, or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way.
- 8.8.3 Each party shall indemnify, on request defend, and hold the other party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with the removal or disposal of any hazardous substances by the indemnifying party or by any person acting on the indemnifying party's behalf, or arising out of or in connection with the subsequent storage, processing or other handling of such hazardous substances by any person or entity after they have been removed by the indemnifying party or persons acting on the indemnifying party's behalf from the site of any SBC-13STATE pole, duct, conduit, or right-of-way.
- 8.8.4 Except as otherwise specifically provided in this section, neither party shall be required to indemnify or defend the other party against, or hold the other party harmless from any Claims for which the other party may be liable under any federal, state, or local environmental statute, rule, regulation, ordinance, or other law.
- 8.9 Miscellaneous Claims. Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, of every kind and character, made, brought, or sought against SBC-13STATE by any person or entity, arising out of or in connection with the subject matter of this Appendix and based on either:
- 8.9.1 claims for taxes, municipal fees, franchise fees, right-to-use fees, and other special charges assessed on SBC-13STATE due to the placement or presence of Attaching Party's facilities on or within SBC-13STATE's poles, ducts, conduits, or rights-of-way; or
- 8.9.2 claims based on the violation by Attaching Party of any third party's intellectual property rights, including but not limited to claims for copyright infringement, patent infringement, or

unauthorized use or transmission of television or radio broadcast programs or other program material.

- 8.10 Attaching Party's General Indemnity Obligations to SBC-13STATE. This section applies only in those situations not expressly covered by Sections 8.3-8.10 and does not apply to any Claims resulting from Attaching Party's enforcement of its rights against SBC-13STATE pursuant to this Appendix or other provisions in the parties' interconnection Appendix, if any. Except as otherwise expressly provided in this Appendix to the contrary, and subject to the exclusions set forth in Section 8.2, Attaching Party shall indemnify, on request defend, and hold SBC-13STATE harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with Attaching Party's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, Attaching Party's performance of any acts authorized under this Appendix, or the presence or activities of Attaching Party's employees or other personnel acting on Attaching Party's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.
- 8.11 SBC-13STATE's General Indemnity Obligations to Attaching Party. This section applies only in those situations not expressly covered by Sections 8.3-8.9 and does not apply to any Claims resulting from SBC-13STATE's enforcement of its rights against Attaching Party pursuant to this Appendix or other provisions in the parties' interconnection Agreement, if any. Except as otherwise expressly provided in this Appendix to the contrary, SBC-13STATE shall indemnify, on request defend, and hold Attaching Party harmless from any and all Claims, on account of or in connection with any death of person or injury, loss, or damage to any person or property, or to the environment, arising out of or in connection with SBC-13STATE's access to or use of SBC-13STATE's poles, ducts, conduits, or rights-of-way, SBC-13STATE's performance of any acts authorized under this Appendix, or the presence or activities of SBC-13STATE's employees or other personnel acting on SBC-13STATE's behalf on, within, or in the vicinity of SBC-13STATE's poles, ducts, conduits, or rights-of-way.

## 9. LIABILITIES AND LIMITATIONS OF LIABILITY

- 9.1 EXCLUSION OF LIABILITY FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS IN

CONNECTION WITH OR ARISING FROM ANY ACT OR FAILURE TO ACT PURSUANT TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS ADVISED SUCH PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION LIMITS EACH PARTY'S LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH NEGLIGENT (INCLUDING GROSSLY NEGLIGENT) ACTS OR OMISSIONS OF SUCH PARTY BUT DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INTENTIONAL MISCONDUCT.

- 9.2 SBC-13STATE Not Liable to Attaching Party for Acts of Third Parties or Acts of God. By affording Attaching Party access to SBC-13STATE Structure SBC-13STATE does not warrant, guarantee, or insure the uninterrupted use of such facilities by Attaching Party. Except as specifically provided in Section 9.5 of this Appendix, Attaching Party assumes all risks of injury, loss, or damage (and the consequences of any such injury, loss, or damage) to Attaching Party's facilities attached to SBC-13STATE's poles or placed in SBC-13STATE's Structure and SBC-13STATE shall not be liable to Attaching Party for any damages to Attaching Party's facilities other than as provided in Section 9.5. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for any death of person or injury, loss, or damage resulting from the acts or omissions of (1) any Other User or any person acting on behalf of an Other User, (2) any governmental body or governmental employee, (3) any third-party property owner or persons acting on behalf of such property owner, or (4) any permit, invitee, trespasser, or other person present at the site or in the vicinity of any SBC-13STATE pole, duct, conduit, or right-of-way in any capacity other than as a SBC-13STATE employee or person acting on SBC-13STATE's behalf. In no event shall SBC-13STATE be liable to Attaching Party under this Agreement for injuries, losses, or damages resulting from acts of God (including but not limited to storms, floods, fires, and earthquakes), wars, civil disturbances, espionage or other criminal acts committed by persons or entities not acting on SBC-13STATE's behalf, cable cuts by persons other than SBC-13STATE's employees or persons acting on SBC-13STATE's behalf, or other causes beyond SBC-13STATE's control which occur at sites subject to this Appendix.
- 9.3 Damage to Facilities. Each party shall exercise due care to avoid damaging the facilities of the other or of Other Users and hereby assumes all responsibility for any and all loss from damage caused by the party and persons acting on the party's behalf. A party shall make an immediate report to the other of the occurrence of any damage and hereby agrees to

reimburse the other party, and/or Other Users for any property damaged caused by the party or persons acting on the party's behalf.

- 9.4 No Limitations of Liability in Contravention of Federal or State Law. Nothing contained in this article shall be construed as exempting either party from any liability, or limiting such party's liability, in contravention of federal law or in contravention of the laws of this State.

## 10. INSURANCE

- 10.1 At all times in which the Attaching Party has attachments to SBC-13STATE poles, or is occupying SBC-13STATE conduit or right-of-way, Attaching Party shall keep and maintain in force, at its own expense, the minimum insurance coverage and limits set for below. Such insurance and coverage shall not only cover the Attaching Party, but it must cover all contractors, subcontractors and/or any other person acting on Attaching Party's behalf, that are providing services under this Appendix.
- 10.1.1 Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Appendix and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
- 10.1.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations.
- 10.1.3 Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, with coverage extending to all owned, hired and non-owned vehicles.
- 10.2 Attaching Party agrees to name SBC-13STATE as an Additional Insured on the Commercial General Liability policy and Commercial Automobile Liability Policy.
- 10.3 SBC-13STATE agrees to accept the Attaching Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

- 10.3.1 Workers' Compensation and Employers Liability: Attaching Party submit to SBC-13STATE its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Appendix or the employer's state of hire; and
- 10.3.2 Automobile liability: Attaching Party shall submit to SBC-13STATE a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Appendix; and
- 10.3.3 General liability: Attaching Party must provide evidence acceptable to SBC-13STATE that it maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.
- 10.4 All insurance required in accordance with this section must be in effect before SBC-13STATE will issue pole attachment or conduit occupancy permits under this Appendix.
- 10.5 Attaching Party agrees to provide SBC-13STATE with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

## 11. ASSIGNMENT OF RIGHTS

- 11.1 Assignment Permitted. Neither party may assign or otherwise transfer its rights or obligations under this Appendix except as provided in this section.
  - 11.1.1 SBC-13STATE may assign its rights, delegate its benefits, and delegate its duties and obligations under this Appendix, without Attaching Party's consent, to any entity controlling, controlled by, or under common control with SBC-13STATE or which acquires or succeeds to ownership of substantially all of SBC-13STATE's assets.
  - 11.1.2 Overlapping of Attaching Party's facilities on SBC-13STATE poles by a third party will be allowed under the following conditions:
    - 11.1.2.1 The Overlapping entity must enter into an Appendix with SBC-13STATE for access to SBC-13STATE Structures and abide by the terms and conditions of such an Occupancy Permit.

- 11.1.2.2 The Overlashing entity must obtain written approval from the Attaching Party and provide a copy to SBC-13STATE prior to submitting a request for access to structure.
- 11.1.2.3 The Overlashing party must submit a written request for access to structure, and indicate on the request that the request is for Overlashing of an existing attachment of the Attaching Party.
- 11.1.2.4 The Overlashing entity is responsible for paying the fees for Overlashing in APPENDIX I and/or APPENDIX PRICING which are separate and in addition to the fees paid by the Attaching Party.
- 11.1.3 Attaching Party may, ancillary to a bona fide loan transaction between Attaching Party and any lender, and without SBC-13STATE's consent, grant security interests or make collateral assignments in substantially all of Attaching Party's assets, including Attaching Party's rights under this Appendix, subject to the express terms of this Appendix. In the event Attaching Party's lender, in the bona fide exercise of its rights as a secured lender, forecloses on its security interest or arranges for a third party to acquire Attaching Party's assets through public or private sale or through an Agreement with Attaching Party, Attaching Party's lender or the third party acquiring Attaching Party's rights under this Appendix shall assume all outstanding obligations of Attaching Party under the agreement and provide proof satisfactory to SBC-13STATE that such lender or third party has complied or will comply with all requirements established under this Appendix. Notwithstanding any provisions of this Appendix to the contrary, such foreclosure by Attaching Party's lender or acquisition of assets by such third party shall not constitute a breach of this Agreement and, upon such foreclosure or acquisition, Attaching Party's lender or such third party shall succeed to all rights and remedies of Attaching Party under this Agreement (other than those rights and remedies, if any, which have not been transferred and, if Attaching Party is a debtor under the Federal Bankruptcy Code, those rights, if any, which remain a part of the debtor's estate notwithstanding an attempted foreclosure or transfer) and to all duties and obligations of Attaching Party under the Agreement, including liability to SBC-13STATE for any act, omission, default, or obligation that arose or occurred under the Agreement prior to the date on which such

lender or third party succeeds to the rights of Attaching Party under the Agreement, as applicable.

- 11.1.4 No assignment or transfer by Attaching Party of rights under this Agreement, occupancy permit subject to this Agreement, or authorizations granted under this Agreement shall be effective until Attaching Party, its successors, and assigns have complied with the provisions of this article, secured SBC-13STATE's prior written consent to the assignment or transfer, if necessary, and given SBC-13STATE notice of the assignment or transfer pursuant to Section 11.3.
- 11.2 Incorporations, Mergers, Acquisitions, and Other Changes in Attaching Party's Legal Identity. When the legal identity or status of Attaching Party changes, whether by incorporation, reincorporation, merger, acquisition, or otherwise, such change shall be treated as an assignment subject to the provisions of this article.
- 11.3 Assignment Shall Not Relieve Attaching Party of Prior Obligations. Except as otherwise expressly agreed by SBC-13STATE in writing, no assignment permitted by SBC-13STATE under this Agreement shall relieve Attaching Party of any obligations arising under or in connection with this Agreement, including but not limited to indemnity obligations under Section 8 of this Agreement or the interconnection agreement, if any.
- 11.4 Satisfaction of Existing Obligations and Assumption of Contingent Liabilities. SBC-13STATE may condition its approval of any requested assignment or transfer on the assignee's or successor's payment or satisfaction of all outstanding obligations of Attaching Party under this Agreement and the assignee's or successor's assumption of any liabilities, or contingent liabilities, of Attaching Party arising out of or in connection with this Agreement.
- 11.5 Sub-Permits Prohibited. Nothing contained in this Agreement shall be construed as granting Attaching Party the right to sublease, sublicense, or otherwise transfer any rights under this Agreement or occupancy permits subject to this Agreement to any third party. Except as otherwise expressly permitted in this Agreement, Attaching Party shall not allow third party to attach or place facilities to or in pole or conduit space occupied by or assigned to Attaching Party or to utilize such space.



## 12. TERMINATION OF AGREEMENT OR OCCUPANCY PERMITS; REMEDIES FOR BREACHES

### 12.1 Termination Due to Non-Use of Facilities or Loss of Required Authority.

This Appendix and all occupancy permits subject to this Appendix shall terminate if Attaching Party ceases to have authority to do business or ceases to do business in this State, ceases to have authority to provide or ceases to provide cable television services in this State (if Attaching Party is cable television system having access to SBC-13STATE's poles, ducts, conduits or rights-of-way solely to provide cable television service), ceases to have authority to provide or ceases to provide telecommunications services in this State (if Attaching Party is a telecommunications carrier which does not also have authority to provide cable television service in this State), or ceases to make active use of SBC-13STATE's poles, ducts, conduits, and rights-of-way.

12.2 Individual occupancy permits subject to this Appendix shall terminate if (a) Attaching Party ceases to utilize the pole attachment or conduit or right of way space subject to such occupancy permit or (b) Attaching Party's permission to use or have access to particular poles, ducts, conduits, or rights-of-way has been revoked, denied, or terminated, or local governmental authority or third-party property owner having authority to revoke, deny, or terminate such use or access.

12.3 Limitation, Termination, or Refusal of Access for Certain Material Breaches. Attaching Party's access to SBC-13STATE's Structure shall not materially interfere with or impair service over any facilities of SBC-13STATE or any Other User, cause material damage to SBC-13STATE's plant or the plant of any Other User, impair the privacy of communications carried over the facilities of SBC-13STATE or any Other User, or create serious hazards to the health or safety of any persons working on, within, or in the vicinity of SBC-13STATE's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC-13STATE may limit, terminate or refuse access if Attaching Party violates this provision.

12.4 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Agreement by either party, the aggrieved party may give written notice of such claimed breach.

12.5 The complaining party shall not be entitled to pursue any remedies available under this Agreement or relevant law unless such notice is given, and

12.5.1 the breaching party fails to cure the breach within 30 days of such notice, if the breach is one which can be cured within 30 days, or

12.5.2 the breaching party fails to commence promptly and pursue diligently a cure of the breach, if the required cure is such that more than 30 days will be required to effect such cure.

12.6 Remedies for Breach. Subject to the provisions of this article, either party may terminate this Agreement in the event of a material breach by the other party or exercise any other legal or equitable right which such party may have to enforce the provisions of this Agreement. In any action based on an alleged breach of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred by such party, including but not limited to reasonable attorneys' fees.

### 13. FAILURE TO ENFORCE

13.1 No Waiver. The failure by either party to take action to enforce compliance with any of the terms or conditions of this Agreement, to give notice of any breach, or to terminate this Agreement or any occupancy permit or authorization subject to this Agreement shall not constitute a waiver or relinquishment of any term or condition of this Agreement, a waiver or relinquishment of the right to give notice of breach, or waiver or relinquishment of any right to terminate this Agreement.

### 14. CONFIDENTIALITY OF INFORMATION

14.1 Information Provided by Attaching Party to SBC-13STATE. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by Attaching Party to SBC-13STATE in connection with this Appendix (including but not limited to information submitted in connection with Attaching Party's applications for occupancy permit shall be deemed to be "confidential" or "proprietary" information of Attaching Party and shall be subject to the terms set forth in this article. Confidential or proprietary information specifically includes information or knowledge related to Attaching Party's review of records regarding a particular market area, or relating to assignment of space to Attaching Party in a particular market area, and further includes knowledge or information about the timing of Attaching Party's request for or review of records or its inquiry about SBC-13STATE facilities. This article does not limit the use by SBC-13STATE of aggregate information relating to the occupancy and use of SBC-13STATE's Structure by firms other than SBC-13STATE (that is, information submitted by Attaching Party and aggregated by SBC-

13STATE in a manner that does not directly or indirectly identify Attaching Party).

- 14.2 Access Limited to Persons with a Need to Know. Confidential or proprietary information provided by Attaching Party to SBC-13STATE in connection with this Agreement shall not be disclosed to, shared with, or accessed by any person or persons other than those who have a need to know such information for the limited purposes set forth in Sections 14.3-14.6.
- 14.3 Permitted Uses of Attaching Party's Confidential Information. Notwithstanding the provisions of Sections 14.1 and 14.2 above, SBC-13STATE and persons acting on SBC-13STATE's behalf may utilize Attaching Party's confidential or proprietary information for the following purposes:
- 14.3.1 posting information, as necessary, to SBC-13STATE's outside plant records;
- 14.3.2 placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC-13STATE's Structure and any SBC-13STATE facilities located on, within, or in the vicinity of such Structure;
- 14.3.3 performing SBC-13STATE's obligations under this Agreement and similar agreements with third parties;
- 14.3.4 determining which of SBC-13STATE's Structure are (or may in the future be) available for SBC-13STATE's own use, and making planning, engineering, construction, and budgeting decisions relating to SBC-13STATE's Structure;
- 14.3.5 preparing cost studies;
- 14.3.6 responding to regulatory requests for information;
- 14.3.7 maintaining SBC-13STATE's financial accounting records; and
- 14.3.8 complying with other legal requirements relating to Structure.
- 14.4 Defense of Claims. In the event of a dispute between SBC-13STATE and any person or entity, including Attaching Party, concerning SBC-13STATE's performance of this Agreement, satisfaction of obligations under similar agreements with third parties, compliance with the Pole

Attachment Act, compliance with the Telecommunications Act of 1996, or compliance with other federal, state, or local laws, regulations, commission orders, and the like, SBC-13STATE may utilize confidential or proprietary information submitted by Attaching Party in connection with this Appendix as may be reasonable or necessary to demonstrate compliance, protect itself from allegations of wrongdoing, or comply with subpoenas, court orders, or reasonable discovery requests; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

14.4.1 obtaining an agreed protective order or nondisclosure Agreement that preserves the confidential and proprietary nature of Attaching Party's information;

14.4.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure Agreement can be obtained; or

14.4.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

14.5 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SBC-13STATE from complying with any subpoena, civil or criminal investigative demand, or other order issued or entered by a court or agency of competent jurisdiction; provided, however, that SBC-13STATE shall not disclose Attaching Party's proprietary or confidential information without first, at SBC-13STATE's option:

14.5.1 obtaining an agreed protective order or nondisclosure Agreement that preserves the confidential and proprietary nature of Attaching Party's information;

14.5.2 seeking such a protective order as provided by law if no agreed protective order or nondisclosure Agreement can be obtained; or

14.5.3 providing Attaching Party notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.

**15. ACCESS TO RIGHTS-OF-WAY**

- 15.1 To the extent SBC-13STATE has the authority to do so, SBC-13STATE grants Attaching Party a right to use any right-of-way for SBC-13STATE poles, ducts, or conduits to which Attaching Party may attach its facilities for the purposes of constructing, operating and maintaining such Attaching Party's facilities on SBC-13STATE's poles, ducts or conduits. Notwithstanding the foregoing, Attaching Party shall be responsible for determining the necessity of and obtaining from private and/or public authority any necessary consent, easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the SBC-13STATE pole, duct or conduit to which Attaching Party seeks to attach its facilities. Attaching Party shall furnish proof of any such easement, right of way, license, permit, permission, certification, or franchise within thirty (30) days of request by SBC-13STATE. SBC-13STATE does not warrant the validity or apportionability of any rights it may hold to place facilities on private property.
- 15.2 Private Rights-of-Way Not Owned or Controlled by Either Party. Neither party shall restrict or interfere with the other party's access to or right to occupy property owned by third-parties which is not subject to the other party's control, including property as to which either party has access subject to non-exclusive rights-of-way. Each party shall make its own, independent legal assessment of its right to enter upon or use the property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations.
- 15.3 Access to Rights-of-Way Generally. At locations where SBC-13STATE has access to third-party property pursuant to non-exclusive rights-of-way, SBC-13STATE shall not interfere with Attaching Party's negotiations with third-party property owners for similar access or with Attaching Party's access to such property pursuant to easements or other rights-of-ways obtained by Attaching Party from the property owner. At locations where SBC-13STATE has obtained exclusive rights-of-way from third-party property owners or otherwise controls the right-of-way, SBC-13STATE shall, to the extent space is available, and subject to reasonable safety, reliability, and engineering conditions, provide access to Attaching Party on a nondiscriminatory basis, provided that the underlying agreement with the property owner permits SBC-13STATE to provide such access, and provided further that SBC-13STATE's charges for such access shall include Attaching Party's pro rata portion of the charges, if any, paid by SBC-13STATE to obtain the right-of-way, plus any other documented legal, administrative, and engineering costs incurred by SBC-

13STATE in obtaining the right-of-way and processing Attaching Party's request for access.

## 16. SPECIFICATIONS

- 16.1 Compliance with Requirements, Specifications, and Standards. Attaching Party's facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's ducts, conduits, and rights-of-way shall be attached, placed, constructed, maintained, repaired, and removed in full compliance with the requirements, specifications, and standards specified in this Appendix and the Administrative Guide.

16.1.1 **SBC-PACIFIC ONLY-** In addition to the terms and conditions included in this Appendix, SBC-PACIFIC shall comply with any requirements set forth in California Public Utility Commission Decision 98-10-058.

- 16.2 Published Standards. Attaching Party's facilities shall be placed, constructed, maintained, repaired, and removed in accordance with current (as of the date when such work is performed) editions of the following publications:

16.2.1 the Blue Book Manual of Construction Procedures, Special Report SR-TAP-001421, published by Bell Communications Research, Inc. ("Bellcore"), and sometimes referred to as the "Blue Book";

16.2.2 the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE");

16.2.3 the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA");

16.2.4 California Public Utility Commission's General Orders 95 and 128 for attachments to Pacific Bell Telephone Company poles, ducts, conduits and rights of way; and,

16.2.5 the SBC-13STATE Structure Access Guidelines

- 16.3 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC-13STATE's manholes and access to SBC-13STATE's conduit system.

16.3.1 Attaching Party will notify SBC-13STATE not less than 5 business days in advance before entering SBC-13STATE's conduit system to perform non-emergency work operations. Such

operations shall be conducted during normal business hours except as otherwise agreed by the parties. The notice shall state the general nature of the work to be performed.

16.3.2 An authorized employee or representative of SBC-13STATE may be present any time when Attaching Party or personnel acting on Attaching Party's behalf enter or perform work within SBC-13STATE's conduit system. Attaching Party shall reimburse SBC-13STATE for costs associated with the presence of SBC-13STATE's authorized employee or representative.

16.3.3 Each party must obtain any necessary authorization from appropriate authorities to open manholes.

## 17. ACCESS TO RECORDS

17.1 SBC-13STATE will, upon request and at the expense of the Attaching Party, provide Attaching Party access to and copies of redacted maps, records and additional information relating to the location, capacity and utilization of SBC-13STATE's Structure. Upon request, SBC-13STATE will meet with the Attaching Party to clarify matters relating to maps, records or additional information. SBC-13STATE does not warrant the accuracy or completeness of information on any maps or records.

17.2 Maps, records or information are and remain the proprietary property of SBC-13STATE, are provided to the Attaching Party solely for the pursue of enabling the Attaching Party to obtain access to SBC-13STATE's Structure, and may not be resold, reproduced or disseminated by the Attaching Party.

17.3 SBC-13STATE will provide information currently available on the SBC-13STATE's maps and/or records regarding:

17.3.1 the location of Structure and street addresses for manholes and poles as shown on SBC-13STATE's maps;

17.3.2 the footage between manholes or lateral ducts lengths, as shown on SBC-13STATE's maps;

17.3.3 the footage between poles, if shown on SBC-13STATE's maps;

17.3.4 the total capacity of the Structure

17.3.5 the existing utilization of the Structure.

- 17.4 SBC-13STATE will not acquire additional information or provide information in formats other than that in which it currently exists and is maintained by SBC-13STATE.
- 17.5 SBC-13STATE will expunge any confidential or proprietary information from its maps and records prior to providing access to the same to the Attaching Party.

## 18. APPLICATIONS AND PRE-OCCUPANCY PERMIT SURVEYS

- 18.1 Occupancy Permits Required. Attaching Party shall apply in writing for and receive an occupancy permit before attaching facilities to specified SBC-13STATE poles or placing facilities within specified SBC-13STATE ducts, conduits, or rights-of-way.
- 18.2 Structure Access Request Form. To apply for an occupancy permit under this Appendix, Attaching Party shall submit to SBC-13STATE the appropriate SBC-13STATE request forms. Attaching Party shall promptly withdraw or amend its request if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific SBC-13STATE Structure.
- 18.3 Make-Ready Survey. A Make-Ready survey must be completed by SBC-13STATE or the Attaching Party before an occupancy permit is issued. The primary purposes of the make ready survey will be to enable SBC-13STATE to
- 18.3.1 confirm or determine the modifications, capacity expansion, and make-ready work, if any, necessary to accommodate Attaching Party's attachment of facilities to SBC-13STATE structures;
- 18.3.2 plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SBC-13STATE's poles, ducts, conduits, rights-of-way, and associated facilities for Attaching Party's proposed attachments or occupancy; and
- 18.3.3 estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.

## 19. POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

- 19.1 Selection of Space. SBC-13STATE will select or approve the Attaching Party's selection of the space Applicant will occupy on SBC-13STATE's poles or in SBC-13STATE's conduit systems. Maintenance ducts shall



not be considered available for Attaching Party's use except as specifically provided elsewhere in this Appendix. Where required by law or franchise agreement, ducts and attachment space on poles reserved for municipal use shall not be considered available for the Attaching Party's use. All other ducts, inner ducts, space on poles or space in rights-of-ways which are not assigned or occupied shall be deemed available for use by **SBC-13STATE**, Attaching Party, and other parties entitled to access underapplicable law.

19.2 Pole, Duct, and Conduit Space Assignments.

19.2.1 After Attaching Party's application for a pole attachment or conduit occupancy permit has been approved by **SBC-13STATE**, the pole, duct, and conduit space selected and/or approved by **SBC-13STATE** in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed twelve (12) months.

19.2.2 **PACIFIC**: The pole, duct, and conduit space selected and/or approved by **SBC-13STATE** in such application will be assigned to Attaching Party for a pre-occupancy period not to exceed nine (9) months in **PACIFIC** only as detailed by the California Public Utility Commission.

19.2.3 **SBC-13STATE** may assign space to itself by making appropriate entries in the same records used to log assignments to Attaching Party and third parties. If **SBC-13STATE** assigns pole, duct, or conduit space to itself, such assignment will automatically lapse 12 months after the date the assignment has been entered into the appropriate **SBC-13STATE** record if **SBC-13STATE** has not occupied such assigned space within such 12 month period.

19.2.4 **PACIFIC**: Space assignment is 9 months in California.

19.2.5 Notices and applications including assignment requests will be date-and time-stamped on receipt.

20. **ISSUANCE OF OCCUPANCY PERMITS (INCLUDING MAKE-READY WORK)**

20.1 Response Within 45 Days. Within 45 days of Attaching Party's submission of a request for access to **SBC-13STATE** Structure, **SBC-13STATE** shall provide a written response to the application. The response shall state whether the request is being granted or denied, and if the request is denied, provide the reasons why the request is being denied.

If denial of access is proposed, SBC-13STATE will meet with the Attaching Party and explore in good faith reasonable alternatives to accommodate the proposed attachment. The Attaching Party must request such meeting within ten (10) business days of receipt of a notice of denial. SBC-13STATE will schedule the meeting within ten (10) business days of receipt of the Attaching Party's written request for a meeting.

20.2 If access is granted the response will further advise Attaching Party in writing of:

20.2.1 what modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC-13STATE's Structure, and

20.2.2 an estimate of charges for such modifications, capacity expansions, or make-ready work.

20.3 Make-ready Work. If it is determined that make ready work will be necessary to accommodate Attaching Party's facilities, Attaching Party shall have 45 days (the "acceptance period") to either

20.3.1 submit payment for the estimate authorizing SBC-13STATE or its contractor to complete the make-ready work; or

20.3.2 advise SBC-13STATE of its willingness to perform the proposed make-ready work itself if permissible in the application area.

20.4 Make-ready work performed by Attaching Party, or by an authorized contractor selected by Attaching Party, shall be performed in accordance with SBC-13STATE's specifications and in accordance with the same standards and practices which would be followed if such work were being performed by SBC-13STATE or SBC-13STATE's contractors. Neither Attaching Party nor authorized contractors selected by Attaching Party shall conduct such work in any manner which degrades the integrity of SBC-13STATE's Structures or interferes with any existing use of SBC-13STATE's facilities or the facilities of any Other User.

20.5 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. Attaching Party shall make arrangements with the Other Users with facilities attached to SBC-13STATE's poles or occupying space in SBC-13STATE's conduit system regarding reimbursement for any expenses incurred by the Other Users in transferring or rearranging the Other Users' facilities to accommodate the attachment or placement of Attaching Party's facilities to or in SBC-13STATE's poles, ducts, conduits and rights of ways.

- 20.6 Reimbursement for the Creation or Use of Additional Capacity. If any additional capacity is created as a result of make-ready work performed to accommodate Attaching Party's facilities, Attaching Party shall not have a preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to SBC-13STATE for the use of such additional capacity. If SBC-13STATE utilizes additional space or capacity created at Attaching Party's expense, SBC-13STATE will reimburse Attaching Party on a pro-rata basis for SBC-13STATE's share, if any, of Attaching Party's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC-13STATE will notify the Attaching Party if any entity, including SBC-13STATE, attaches facilities to additional capacity on SBC-13STATE's Structure created at the Attaching Party's expense. SBC-13STATE shall not be required to collect or remit any such amounts to Attaching Party, to resolve or adjudicate disputes over reimbursement between Attaching Party and Other Users.
- 20.7 If Attaching Party utilizes space or capacity on any SBC-13STATE Structure created at SBC-13STATE's expense after February of 1996, the Attaching Party will reimburse Attaching Party on a pro-rata basis for the Attaching Party's share, if any, of SBC-13STATE's capacity creation costs.
- 20.8 Occupancy Permit and Attachment. After all required make-ready work is completed, SBC-13STATE will issue an occupancy permit confirming that Attaching Party may attach specified facilities to SBC-13STATE's Structure.
- 20.9 The Attaching Party must occupy the assigned space within a period not to exceed twelve (12) months from the issuance of the occupancy permit. If the Attaching Party does not occupy the assigned space within the twelve (12) month period, the Occupancy Permit will lapse and the space will be considered available for use by SBC-13STATE or Other User.
- \*PACIFIC only: Space assignment shall not exceed nine (9) months in California.
- 20.10 The Attaching Party's obligation to pay semiannual pole attachment or conduit occupancy fees will commence on the date the Occupancy Permit is provided by SBC-13STATE to the Attaching Party.

## 21. CONSTRUCTION OF ATTACHING PARTY'S FACILITIES

- 21.1 Responsibility for Attaching and Placing Facilities. The Attaching Party shall be responsible for the actual attachment of its facilities to SBC-13STATE's poles and the placement of such facilities in SBC-13STATE's ducts, conduits, and rights-of-way and shall be solely responsible for all costs and expenses incurred by it or on its behalf in connection with such activities.
- 21.2 Construction Schedule. After the issuance of an occupancy permit, Attaching Party shall provide SBC-13STATE with a construction schedule and thereafter keep SBC-13STATE informed of anticipated changes in the construction schedule.

## 22. USE AND ROUTINE MAINTENANCE OF ATTACHING PARTY'S FACILITIES

- 22.1 Routine Maintenance of Attaching Party's Facilities. Each occupancy permit subject to this Agreement authorizes Attaching Party to engage in routine maintenance of facilities located on or within SBC-13STATE's poles, ducts, and conduits. Routine maintenance does not include the replacement or modification of Attaching Party's facilities in any manner which results in Attaching Party's facilities differing substantially in size, weight, or physical characteristics from the facilities described in Attaching Party's occupancy permit.
- 22.2 Short-term Use of Maintenance Ducts for Repair and Maintenance Activities. Maintenance ducts shall be available, on a nondiscriminatory basis, for short-term (not to exceed 30 days) non-emergency maintenance or repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that use of the maintenance duct for non-emergency maintenance and repair activities must be scheduled by SBC-13STATE. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SBC-13STATE of such use and must either vacate the maintenance duct within 30 days or, with SBC-13STATE's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner duct, a suitable replacement inner duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance duct. Cables temporarily placed in the maintenance duct on a non-emergency basis shall be subject to such accommodations as may be necessary to rectify emergencies which may occur while the maintenance duct is occupied.

**23. MODIFICATION OF ATTACHING PARTY'S FACILITIES**

- 23.1 Notification of Planned Modifications. Attaching Party shall notify SBC-13STATE in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities already attached to a SBC-13STATE Structure. The notice shall contain sufficient information to enable SBC-13STATE to determine whether the proposed addition, relocation, replacement, or modification is within the scope of Attaching Party's present occupancy permit or requires a new or amended occupancy permit.
- 23.2 Replacement of Facilities and Overlashing Additional Cables. Attaching Party may replace existing facilities with new facilities occupying the same SBC-13STATE Structure, and may overlash additional cables to its own existing facilities; provided, however, that such activities shall not be considered to be routine maintenance and shall be subject to the requirements of this article.

**24. REQUIRED REARRANGEMENTS OF ATTACHING PARTY'S FACILITIES**

- 24.1 Required Rearrangement of Attaching Party's Facilities. Attaching Party agrees that Attaching Party will cooperate with SBC-13STATE and other users in making rearrangements to SBC-13STATE Structure as may be necessary, and that costs incurred by Attaching Party in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable law.
- 24.2 Whenever feasible, SBC-13STATE shall give Attaching Party not less than 30 days prior written notice of the need for Attaching Party to rearrange its facilities pursuant to this section. The notice shall state the date by which such rearrangements are to be completed. Attaching Party shall complete such rearrangements within the time prescribed in the notice. If Attaching Party does not rearrange facilities within noted time, SBC-13STATE will rearrange at Attaching Party's expense.

**25. EMERGENCY REPAIRS AND POLE REPLACEMENTS**

- 25.1 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling such party to make such repairs.

25.1.1 Nothing contained in this Appendix shall be construed as requiring either party to perform any repair or service restoration work of

any kind with respect to the other party's facilities or the facilities of joint users.

- 25.1.2 Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any entity with facilities in the conduit section in which the maintenance duct is located; provided, however, that an entity using the maintenance duct for emergency repair activities will notify SBC-13STATE within 12 hours of the current business day (or first business day following a non-business day) that such entity is entering the SBC-13STATE conduit system and using the maintenance duct for emergency restoral purposes. The notice will include a description of the emergency and non-emergency services involved and an estimate of the completion time. Maintenance ducts will be used to restore the highest priority services, as defined in Section 2.7, first. Existing spare ducts may be used for restoration purposes providing the spare ducts are restored after restoration work is complete. Any spare ducts not returned will be included be assigned to the user of the duct and an occupancy permit issued.
- 25.1.3 The Attaching Party shall either vacate the maintenance duct within 30 days or, with SBC-13STATE's consent, rearrange its facilities to ensure that at least one full-sized replacement maintenance duct (or, if the designated maintenance duct was an inner-duct, a suitable replacement inner-duct) is available for use by all occupants in the conduit section within 30 days after such person or entity occupies the maintenance ducts. Entities not vacating the maintenance duct must provide an immediate maintenance duct at the entity's cost.
- 25.2 Designation of Emergency Repair Coordinators and Other Information. For each SBC-13STATE construction district, Attaching Party shall provide SBC-13STATE with the emergency contact number of Attaching Party's designated point of contact for coordinating the handling of emergency repairs of Attaching Party's facilities and shall thereafter notify SBC-13STATE of changes to such information.
- 25.3 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SBC-13STATE, Attaching Party, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties present in accordance with the following principles.

25.3.1 Emergency service restoration work requirements shall take precedence over other work operations.

25.3.2 Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, national security and hospital lines) shall be given the highest priority and temporary occupancy of the maintenance duct (and, if necessary, other unoccupied ducts) shall be assigned in a manner consistent with this priority. Secondary priority shall be given to restoring services to the local service providers with the greatest numbers of local lines out of service due to the emergency being rectified. The parties shall exercise good faith in assigning priorities, shall base their decisions on the best information then available to them at the site in question, and may, by mutual agreement at the site, take other factors into consideration in assigning priorities and sequencing service restoration activities.

25.3.3 SBC-13STATE shall determine the order of precedence of work operations and assignment of duct space in the maintenance duct (and other unoccupied ducts) only if the affected parties present are unable to reach prompt agreement; provided, however, that these decisions shall be made by SBC-13STATE on a nondiscriminatory basis in accordance with the principles set forth in this section.

25.4 Emergency Pole Replacements.

25.4.1 When emergency pole replacements are required, SBC-13STATE shall promptly make a good faith effort to contact Attaching Party to notify Attaching Party of the emergency and to determine whether Attaching Party will respond to the emergency in a timely manner.

25.4.2 If notified by SBC-13STATE that an emergency exists which will require the replacement of a pole, Attaching Party shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to an SBC-13STATE replacement pole, the transfer shall be in accordance with SBC-13STATE's placement instructions.

25.4.3 If Attaching Party is unable to respond to the emergency situation immediately, Attaching Party shall so advise SBC-13STATE and thereby authorize SBC-13STATE (or any Other User sharing the pole with SBC-13STATE) to perform such emergency-

necessitated transfers (and associated facilities rearrangements) on Attaching Party's behalf.

25.5 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with emergency repairs of its own facilities and transfers or rearrangements of such facilities associated with emergency pole replacements made in accordance with the provisions of this article.

25.5.1 Each party shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of such party's facilities.

25.5.2 Attaching Party shall reimburse SBC-13STATE for the costs incurred by SBC-13STATE for work performed by SBC-13STATE on Attaching Party's behalf in accordance with the provisions of this article.

## 26. INSPECTION BY SBC OF ATTACHING PARTY'S FACILITIES

26.1 Post-Construction Inspections. SBC-13STATE will, at the Attaching Party's expense, conduct a post-construction inspection of the Attaching Party's attachment of facilities to SBC-13STATE's Structures for the purpose of determining the conformance of the attachments to the occupancy permit. SBC-13STATE will provide the Attaching Party advance written notice of proposed date and time of the post-construction inspection. The Attaching Party may accompany SBC-13STATE on the post-construction inspection.

26.2 Right to Make Periodic or Spot Inspections. SBC-13STATE shall have the right, but not the obligation, to make periodic or spot inspections of all facilities attached to SBC-13STATE's Structure. These inspections will not be made more often than once every 2 years unless in SBC-13STATE's judgement such inspections are required for reasons involving safety or because of an alleged violation of the terms of this Agreement.

26.3 If Attaching Party's facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's facilities are not in compliance with this Appendix, SBC-13STATE may charge Attaching Party for the inspection. The costs of Periodic Inspections will be paid by those Attaching Parties with 2% or greater of their attachments in violation. The amount paid by



the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection.

- 26.4 If the inspection reflects that Attaching Party's facilities are not in compliance with the terms of this Appendix, Attaching Party shall bring its facilities into compliance within 30 days after being notified of such noncompliance. If any make ready or modification work to SBC-13STATE's Structures is required to bring Attaching Party's facilities into compliance, the Attaching Party shall provide notice to SBC-13STATE and the make ready work or modification will be treated in the same fashion as make ready work or modifications for a new request for attachment.

## 27. TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 27.1 Facilities to Be Marked. Attaching Party shall tag or otherwise mark all of Attaching Party's facilities placed on or in SBC-13STATE's Structure in a manner sufficient to identify the facilities as those belonging to the Attaching Party.
- 27.2 Removal of Untagged Facilities. SBC-13STATE may, without notice to any person or entity, remove from SBC-13STATE's poles or any part of SBC-13STATE's conduit system the Attaching Party's facilities, if SBC-13STATE determines that such facilities are not the subject of a current occupancy permit and are not otherwise lawfully present on SBC-13STATE's poles or in SBC-13STATE's conduit system.
- 27.3 Notice to Attaching Party. If any of Attaching Party's facilities for which no occupancy permit is presently in effect are found attached to SBC-13STATE's poles or anchors or within any part of SBC-13STATE's conduit system, SBC-13STATE, without prejudice to other rights or remedies available to SBC-13STATE under this Appendix, and without prejudice to any rights or remedies which may exist independent of this Agreement, shall send a written notice to Attaching Party advising Attaching Party that no occupancy permit is presently in effect with respect to the facilities and that Attaching Party must, within 30 days, respond to the notice as provided in Section 27.6 of this Appendix.
- 27.4 Attaching Party's Response. Within 60 days after receiving a notice under Section 27.5 of this Appendix, Attaching Party shall acknowledge receipt of the notice and submit to SBC-13STATE, in writing, an application for a new or amended occupancy permit with respect to such facilities.

- 27.5 Approval of Request and Retroactive Charges. If SBC-13STATE approves Attaching Party's application for a new or amended occupancy permit, Attaching Party shall be liable to SBC-13STATE for all fees and charges associated with the unauthorized attachments as specified in Section 27.10 of this Appendix. The issuance of a new or amended occupancy permit as provided by this article shall not operate retroactively or constitute a waiver by SBC-13STATE of any of its rights or privileges under this Appendix or otherwise.
- 27.6 Attachment and occupancy fees and charges shall continue to accrue until the unauthorized facilities are removed from SBC-13STATE's poles, conduit system or rights of way or until a new or amended occupancy permit is issued and shall include, but not be limited to, all fees and charges which would have been due and payable if Attaching Party and its predecessors had continuously complied with all applicable SBC-13STATE licensing requirements. Such fees and charges shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. In addition, the Attaching Party shall be liable for an unauthorized attachment fee in the amount of 5 times the annual attachment and occupancy fees in effect on the date Attaching Party is notified by SBC-13STATE of the unauthorized attachment or occupancy. Payment of such fees shall be deemed liquidated damages and not a penalty. In addition, Attaching Party shall rearrange or remove its unauthorized facilities at SBC-13STATE's request to comply with applicable placement standards, shall remove its facilities from any space occupied by or assigned to SBC-13STATE or another Other User, and shall pay SBC-13STATE for all costs incurred by SBC-13STATE in connection with any rearrangements, modifications, or replacements necessitated as a result of the presence of Attaching Party's unauthorized facilities.
- 27.7 Removal of Unauthorized Attachments. If Attaching Party does not obtain a new or amended occupancy permit with respect to unauthorized facilities within the specified period of time, SBC-13STATE shall by written notice advise Attaching Party to remove its unauthorized facilities not less than 60 days from the date of notice and Attaching Party shall remove the facilities within the time specified in the notice. If the facilities have not been removed within the time specified in the notice, SBC-13STATE may, at SBC-13STATE's option, remove Attaching Party's facilities at Attaching Party's expense.
- 27.8 No Ratification of Unpermitted Attachments or Unauthorized Use of SBC-13STATE's Facilities. No act or failure to act by SBC-13STATE with regard to any unauthorized attachment or occupancy or unauthorized use of SBC-13STATE's Structure shall be deemed to constitute a ratification

by SBC-13STATE of the unauthorized attachment or occupancy or use, nor shall the payment by Attaching Party of fees and charges for unauthorized pole attachments or conduit occupancy exonerate Attaching Party from liability for any trespass or other illegal or wrongful conduct in connection with the placement or use of such unauthorized facilities.

## **28. REMOVAL OF ATTACHING PARTY'S FACILITIES**

28.1 When Applicant no longer intends to occupy space on a SBC-13STATE pole or in a SBC-13STATE duct or conduit, Applicant will provide written notification to SBC-13STATE that it wishes to terminate the occupancy permit with respect to such space and will remove its facilities from the space described in the notice. Upon removal of Applicant's facilities, the occupancy permit shall terminate and the space shall be available for reassignment.

28.1.1 Attaching Party shall be responsible for and shall bear all expenses arising out of or in connection with the removal of its facilities from SBC-13STATE's Structure.

28.1.2 Except as otherwise agreed upon in writing by the parties, Applicant must, after removing its facilities, plug all previously occupied ducts at the entrances to SBC-13STATE's manholes.

28.1.3 Applicant shall be solely responsible for the removal of its own facilities from SBC-13STATE's Structure.

28.2 At SBC-13STATE's request, Attaching Party shall remove from SBC-13STATE's Structure any of Attaching Party's facilities which are no longer in active use. Upon request, the Attaching Party will provide proof satisfactory to SBC-13STATE that an Attaching Party's facility is in active service. Attaching Party shall not abandon any of its facilities by leaving such facilities on or in SBC-13STATE's Structure.

28.3 Removal Following Termination of Occupancy permit. Attaching Party shall remove its facilities from SBC-13STATE's poles, ducts, conduits, or rights-of-way within 60 days after termination of the occupancy permit.

28.4 Removal Following Replacement of Facilities. Attaching Party shall remove facilities no longer in service from SBC-13STATE's Structures within 60 days after the date Attaching Party replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit.

- 28.5 Removal to Avoid Forfeiture. If the presence of Attaching Party's facilities on or in SBC-13STATE's Structure would cause a forfeiture of the rights of SBC-13STATE to occupy the property where such Structure is located, SBC-13STATE will promptly notify Attaching Party in writing and Attaching Party shall not, without due cause and justification, refuse to remove its facilities within such time as may be required to prevent such forfeiture. SBC-13STATE will give Attaching Party not less than 60 days from the date of notice to remove Attaching Party's facilities unless prior removal is required to prevent the forfeiture of SBC-13STATE's rights. At Attaching Party's request, the parties will engage in good faith negotiations with each other, with Other Users, and with third-party property owners and cooperatively take such other steps as may be necessary to avoid the unnecessary removal of Attaching Party's facilities.
- 28.6 Removal of Facilities by SBC-13STATE; Notice of Intent to Remove. If Attaching Party fails to remove its facilities from SBC-13STATE's Structure in accordance with the provisions of Sections 28.1-28.6 of this Appendix, SBC-13STATE may remove such facilities and store them at Attaching Party's expense in a public warehouse or elsewhere without being deemed guilty of trespass or conversion and without becoming liable to Attaching Party for any injury, loss, or damage resulting from such actions. SBC-13STATE shall give Attaching Party not less than 60 days prior written notice of its intent to remove Attaching Party's facilities pursuant to this section.
- 28.7 Removal of Facilities by SBC-13STATE. If SBC-13STATE removes any of Attaching Party's facilities pursuant to this article, Attaching Party shall reimburse SBC-13STATE for SBC-13STATE's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.

## 29. RATES, FEES, CHARGES, AND BILLING

- 29.1 Rates, Charges and Fees Subject to Applicable Laws, Regulations, Rules, and Commission Orders. All rates, charges and fees outlined in this Appendix will be set forth in APPENDIX PRICING as part of the Interconnection Agreement. All rates, charges and fees shall be subject to all applicable federal and state laws, rules, regulations, and commission orders.
- 29.2 Changes to Rates, Charges and Fees. Subject to applicable federal and state laws, rules, regulations and orders, SBC-13STATE shall have the right to change the rates, charges and fees outlined in this Appendix. SBC-13STATE will provide the Attaching Party 60 days written notice,

advising the Attaching Party of the specific changes being made and the effective date of the change. If the changes outlined in the notice are not acceptable to the Attaching Party, Attaching Party may either (1) seek renegotiation of this Appendix, (2) terminate this Appendix, or (3) seek relief through the dispute resolution process in the General Terms and Conditions of this Agreement.

### 30. PERFORMANCE AND PAYMENT BONDS

30.1 Bond May Be Required. **SBC-13STATE** may require Attaching Party, authorized contractors, and other persons acting on Attaching Party's behalf to execute performance and payment bonds (or provide other forms of security) in amounts and on terms sufficient to guarantee the performance of the Attaching Party's obligations arising out of or in connection with this Appendix.

30.1.1 If a bond or similar form of assurance is required of Attaching Party, an authorized contractor, or other person acting on Attaching Party's behalf, Attaching Party shall promptly submit to **SBC-13STATE** adequate proof that the bond remains in full force and effect and provide certification from the company issuing the bond that the bond will not be cancelled, changed or materially altered without first providing **SBC-13STATE** 60 days written notice.

30.2 Payment and Performance Bonds in Favor of Contractors and Subcontractors. Attaching Party shall be responsible for paying all employees, contractors, subcontractors, mechanics, materialmen and other persons or entities performing work or providing materials in connection with Attaching Party's performance under this Appendix. In the event any lien, claim or demand is made on **SBC-13STATE** by any such employee, contractor, subcontractor, mechanic, materialman, or other person or entity providing such materials or performing such work, **SBC-13STATE** may require, in addition to any security provided under Section 30.1 of this Appendix, that Attaching Party execute payment or performance bonds, or provide such other security, as **SBC-13STATE** may deem reasonable or necessary to protect **SBC-13STATE** from any such lien, claim or demand.

### 31. NOTICES

31.1 Notices to Attaching Party. All written notices required to be given to a party shall be delivered or mailed to the party's duly authorized agent or attorney, as designated in this section.

31.1.1 Such notice may be delivered to the party's duly authorized agent or attorney in person or by agent or courier receipted delivery.

31.1.2 Such notice may be mailed to the party's duly authorized agent or attorney by registered or certified mail, return receipt requested.

When notice is given by mail, such notice shall be complete upon deposit of the notice, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and control of the United States Postal Service and shall be deemed to have been given three days after the date of deposit.

31.1.3 Notices to a party shall be sent to the authorized agent or attorney designated below:

If to Attaching Party:

Name: Amy Gilchrist

Firm: American Fiber Systems, Inc.

Address: 100 Meridian Centre Suite 150

City/State/Zip: Rochester, NY 14618

If to SBC:

Name: Contract Administration

Title: Notices Manager

Firm: SBC Communications, Inc.

Address: 311 S. Akard, 9<sup>th</sup> Floor

City/State/Zip: Dallas, TX 75202-5398

31.2 Changes in Notice Requirements. Either party may, from time to time, change notice addressees and addresses by giving written notice of such change to the other party. Such notice shall state, at a minimum, the name, title, firm, and full address of the new addressee.

## **32. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

32.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this

Appendix which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no permit; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire Agreement.