

APPENDIX POLES, CONDUITS, AND RIGHTS-OF-WAY

MASTER AGREEMENT FOR ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

This Appendix is made by and between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC MISSOURI") and CLEC LEGAL NAME ("CLEC"). As provided in this Appendix, SBC MISSOURI will provide CLEC nondiscriminatory access, in accordance with the Pole Attachment Act, the Telecommunications Act of 1996, and applicable rules, regulations, and commission orders, to poles, ducts, conduits, and rights-of-way owned or controlled by SBC MISSOURI and located in this state.

ARTICLE 1: PARTIES

- 1.01 Southwestern Bell Telephone, L.P. d/b/a SBC Missouri. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC MISSOURI") is a Texas Limited Partnership. SBC MISSOURI's principal office is located at 350 McCullough, San Antonio, Texas 78215.
- 1.02 CLEC Legal Name. CLEC Legal Name. ("CLEC") is a corporation chartered in the State of _____. CLEC maintains an office at (spell out street names and state) example: 123 South Main Street Boulevard (address), Dallas (city), Texas (state), zip75202. CLEC is more fully described in EXHIBIT II ("Identification of CLEC").

ARTICLE 2: PURPOSE OF APPENDIX

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, states that each local exchange carrier has the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier on rates, terms, and conditions that are consistent with the Pole Attachment Act, 47 U.S.C. § 224, as amended by the Telecommunications Act of 1996. The primary purpose of this Appendix is to set forth the basic rates, terms, conditions, and procedures under which CLEC shall have access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way. SBC MISSOURI shall provide CLEC with nondiscriminatory access to poles, ducts, conduits, or rights-of-way owned solely or in part by it, or controlled by it, as the term "nondiscriminatory access" is defined in the Telecommunications Act of 1996. This Appendix is intended by the parties to implement, rather than abridge, their respective rights and remedies under federal and state law.

- 2.01 Access Ancillary to Arrangements for Interconnection, Collocation, and Access to Unbundled Network Elements. Nothing contained in this Appendix shall be construed as precluding CLEC from having such additional access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way as may be necessary to effectuate the terms of other arrangements between CLEC and SBC MISSOURI relating to interconnection, collocation, and access to unbundled network elements. To the extent that this Appendix does not provide the access required, additional terms of access may be included in any tariff or agreement between the parties establishing arrangements for interconnection, collocation, or access to unbundled network elements.

ARTICLE 3: DEFINITIONS

- 3.01 Definitions In General. As used in this Appendix, the terms defined in this article shall have the meanings set forth below in Sections 3.02 to 3.48 except as the context otherwise requires.
- 3.02 Anchor. The term "anchor" refers to a device, structure, or assembly which stabilizes a pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire which, in turn, is attached to the pole. The term "anchor" does not include the guy stand which connects the anchor to the pole.
- 3.03 Appendix. When capitalized, the term "Appendix" refers to this Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way. The term "Appendix" includes all appendices, attachments, and addenda to this Appendix.

- 3.04 Assigned. When used with respect to pole, duct, conduit, or right-of-way space, the term “assigned” refers to space that is occupied by, or has been designated for occupancy by, either party or by another telecommunications carrier, cable television system, provider of telecommunications services, governmental entity, or other person or entity having occupancy rights. Except as otherwise specifically provided in this Appendix, no person or entity shall have the right to occupy space assigned to another person or entity (other than on a temporary basis in the event of emergency) until the assignment has been released or lapsed. Assignment is further described in Article 8 of this Appendix.
- 3.05 Authorized contractor. “Authorized contractors” are contractors selected by CLEC who may, subject to CLEC’s direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SBC MISSOURI or persons acting on SBC MISSOURI’s behalf. As used in this Appendix, the term “authorized contractor” does not refer to contractors performing routine installation, maintenance, or repair work on CLEC’s behalf or other contractors who may be selected by CLEC to perform work on CLEC’s behalf without SBC MISSOURI’s approval. More specifically, the term “authorized contractor” refers only to those contractors included on a list of contractors mutually approved by CLEC and SBC MISSOURI to perform one or more of the following tasks within a specified SBC MISSOURI construction district: (a) installation of those sections of CLEC’s ducts or facilities which connect to SBC MISSOURI’s conduit system as provided in Section 6.08(c); (b) installation of inner duct as provided in Section 10.02(b); (c) excavation work in connection with the removal of retired or inactive (dead) cables as provided in Section 10.02(c); or (d) make-ready work as provided in Sections 10.04 and 10.05. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both parties and is an authorized contractor only in those SBC MISSOURI construction districts agreed to by both parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SBC MISSOURI construction district constitute approval of such authorized contractor for the area served by a different SBC MISSOURI construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SBC MISSOURI construction districts in which the work is to be performed.
- 3.06 Available. When used with respect to pole, duct, conduit, and right-of-way space, the term “available” refers to space that is not occupied or assigned. In conduit systems owned or controlled by SBC MISSOURI, maintenance ducts shall not be considered “available” for assignment. All other unassigned ducts, inner ducts, sub-ducts, and partitioned conduits in a conduit system owned or controlled by SBC MISSOURI shall be deemed available for assignment.
- 3.07 Cables. The term “cable” includes but is not limited to twisted-pair copper, coaxial, and fiber optic cables. Cables are transmissions media which may be attached to or placed in poles, ducts, conduits, and rights-of-way but are not themselves poles, ducts, conduits, or rights-of-way. Nothing contained in this Appendix shall be construed as a grant of access to cables attached to SBC MISSOURI’s poles or placed in SBC MISSOURI’s ducts, conduits, or rights-of-way.
- 3.08 Conduit. The term “conduit” refers to all SBC MISSOURI conduits subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, conduits are tubes or structures, usually underground or on bridges, containing one or more ducts used to enclose cables, wires, and associated transmission equipment. Except as the context otherwise requires, the term “conduit” refers only to conduit owned or controlled by SBC MISSOURI, including the re-enterable manholes and handholes used to connect ducts and provide access to the cables, wires, and facilities within the ducts. 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 MISSOURI structures (such as huts and cabinets) which branch off from SBC MISSOURI’s conduit.

- 3.09 Conduit occupancy. The term “conduit occupancy” refers to the presence of wire, cable, optical conductors, or other within any part of SBC MISSOURI’s conduit system.
- 3.10 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” refers only to conduit systems owned, or controlled by SBC MISSOURI and does not include (a) cables and other telecommunications equipment located within conduit structures ~~or~~ (b) central office vaults, controlled environment vaults, or other BC MISSOURI structures (such as huts and cabinets) which branch off from SBC MISSOURI’s conduit or (c) isolated pipe and ducts not connected to the conduit system.
- 3.11 Construction District. The term “construction district” refers to the SBC MISSOURI organization responsible for outside plant construction in a specified geographic area. The term “construction district” connotes responsibility for handling a function and not to the official name of the organization responsible for outside plant construction matters.
- 3.12 Cost/Cost-based. The terms “cost” and “costs” refer to costs determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. The term “cost-based” refers to rates, fees, and other charges which are based on costs and determined in a manner consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders.
- 3.13 Duct. The term “duct” refers to all SBC MISSOURI ducts subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). In general, a duct is a single enclosed tube, pipe, or channel for enclosing and carrying cables, wires, and other facilities. As used in this Appendix, the term “duct” includes “inner ducts” created by subdividing a duct into smaller channels. Except as the context otherwise requires, the term “duct” refers only to ducts owned or controlled by SBC MISSOURI and space within those ducts and does not include cables and other telecommunications equipment located within such ducts.
- 3.14 Exhibit. The capitalized term “EXHIBIT” refers to one of the following exhibits to this Appendix.
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| EXHIBIT I: | Pole and Conduit Attachment Rates |
| EXHIBIT II: | Identification of CLEC |
| EXHIBIT III: | Administrative Forms and Notices |
| SW-9433: | Pole Attachments |
| SW-9434: | Access Application and Make-Ready Authorization Work |
| SW-9435: | Conduit Occupancy |
| SW-9436A: | Notification of Surrender or Modification of Pole Attachment License by Licensee |
| SW-9436B: | Notification of Surrender or Modification of Conduit Occupancy License by CLEC |
| SW-9436C: | Notification of Unauthorized Attachments by CLEC |
| EXHIBIT IV: | Insurance Requirements |
| EXHIBIT V: | Nondisclosure Agreement |
| EXHIBIT VII: | Notices to SBC MISSOURI |
| EXHIBIT VIII: | Identification of Utility Liaison Supervisor (ULS) |
- 3.15 Facilities. The terms “facility” and “facilities” refer to any property, equipment, or items owned or controlled by any person or entity.
- 3.16 FCC. The acronym “FCC” refers to the Federal Communications Commission.

- 3.17 First Interconnection Order. The term “First Interconnection Order” refers to the First Report and Order adopted by the FCC on September 1, 1996, and released on September 8, 1996, in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and CC Docket No. 95-185, In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers. Access to poles, ducts, conduits, and rights-of-way is addressed in the First Interconnection Order in Paragraphs 1119-1240.
- 3.18 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 MISSOURI’s conduit system and does not refer to handholes which provide access to buried cables not housed within SBC MISSOURI ducts or conduits. As used in this Appendix, the term “handhole” refers only to handhole structures owned or controlled by SBC MISSOURI and does not include cables and other telecommunications equipment located within handhole structures.
- 3.20 Interconnection agreement. The term “interconnection agreement” refers to the interconnection agreement, if any, to which this Appendix has been made an appendix, attachment, or exhibit, or, as the context may require, any other interconnection agreement between the parties.
- 3.21 Jacket. The term “jacket” refers to a single enclosed outer covering containing communications wires, fibers, or other communications media. As used in this Appendix, the term “jacket” refers to the outermost sheath or jacket of a cable.
- 3.22 Joint user. The term “joint user” refers to any person or entity which has entered or may enter into an agreement or arrangement with SBC MISSOURI permitting it to attach its facilities to SBC MISSOURI’s poles or anchors or place its facilities in SBC MISSOURI’s conduit system.
- 3.23 License. The term “license” refers to a written instrument confirming that SBC MISSOURI has afforded CLEC or another joint user access to specific space on or within a pole, duct, conduit, or right-of-way owned or controlled by SBC MISSOURI in accordance with applicable federal and state laws and regulations. The term “license” includes licenses issued by SBC MISSOURI pursuant to this Appendix and may, if the context requires, refer to licenses issued by SBC MISSOURI prior to the date of this Appendix.
- 3.24 Local service provider (“LSP”). The terms “local service provider” and “LSP” refer to telecommunications carriers authorized by applicable federal and state laws and regulations to provide local exchange service. As used in this Appendix, these terms include SBC MISSOURI.
- 3.25 Maintenance duct. The term “maintenance duct” generally refers to a full-sized duct (typically three inches in diameter or larger) which may be used by SBC MISSOURI and joint users (including CLEC) on a short-term basis for maintenance, repair, or emergency restoration activities. Maintenance ducts will be available, on a nondiscriminatory basis, to all persons and entities (including SBC MISSOURI, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located for (a) short-term emergency repairs as provided in Article 15 of this Appendix and (b) short-term non-emergency maintenance or repair activities as provided in Articles 12 and 13 of this Appendix. No more than one full-sized duct within any given conduit system cross-section shall be designated by SBC MISSOURI as the maintenance duct. In those locations where, on the effective date of this Appendix, there is not a full-sized duct available to be used as a maintenance duct, SBC MISSOURI will designate an inner duct, if one is available, as the maintenance duct although such inner duct may be too small to accommodate some of the cables occupying the conduit section in which such inner duct is located. The term “maintenance duct” does not include ducts and conduits extending from a SBC MISSOURI manhole to customer premises. Maintenance ducts shall not be considered “available” (as defined in Section 3.06) for assignment to SBC MISSOURI, CLEC, or joint users for purposes other than short-term use as contemplated in this section; provided, however, that SBC MISSOURI may assign the duct currently designated as a maintenance duct if another suitable full-sized duct will be made available to serve as a replacement maintenance duct and may assign an inner duct currently designated as a maintenance duct if another inner duct will be made available to serve as a replacement maintenance duct. Maintenance duct designations may change from time to time and may or may not be reflected in SBC MISSOURI’s outside

plant records. When only one usable full-sized duct remains in a conduit section, that duct shall be deemed to be the maintenance duct.

- 3.26 Make-ready work. The term “make-ready work” refers to all work performed or to be performed to prepare SBC MISSOURI’s poles, ducts, conduits, and rights-of-way and related facilities for the requested occupancy or attachment of CLEC’s facilities. Make-ready work does not include the actual installation of CLEC’s facilities. “Make-ready work” includes, but is not limited to, clearing obstructions (e.g., by “rodding” ducts to ensure clear passage), the rearrangement, transfer, replacement, and removal of existing facilities on a pole or in a conduit system where such work is required to accommodate CLEC’s facilities (as contrasted from work performed on SBC MISSOURI’s behalf in furtherance of SBC MISSOURI’s own business needs, or convenience). “Make-ready work” may require “dig-ups” of existing facilities and may include the repair, enlargement or modification of SBC MISSOURI’s facilities (including, but not limited to, conduits, ducts, handholes and manholes), consolidating services into fewer cables, or the performance of other work required to make a pole, anchor, duct, conduit, manhole, handhole or right-of-way usable for the initial placement of CLEC’s facilities. All splicing and associated wire work related to any make ready request will be completed by the owner of the facilities involved. The cost for performing this work will be paid for by the party requiring the make ready.
- 3.27 Manhole. The term “manhole” refers to an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron, cast aluminum, steel, or concrete manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining facilities in a conduit. The term “handhole” refers to a structure similar in function to a manhole, but which is usually too small for personnel to enter. As used in this Appendix, the term “manhole” refers only to manhole structures owned or controlled by SBC MISSOURI and does not include cables and other telecommunications equipment located within manhole structures.
- 3.28 Occupancy. The term “occupancy” refers to the physical presence of facilities on a pole, in a conduit or duct, or within a right-of-way.
- 3.29 Overlashing. The term “overlashing” refers to the practice of placing an additional cable or inner duct by lashing spinning wire over both existing cables and existing strands supporting those cables or inner ducts.
- 3.30 Person acting on CLEC’s behalf. The terms “person acting on CLEC’s behalf,” “personnel performing work on CLEC’s behalf,” and similar terms include both natural persons and firms and ventures of every type, including, but not limited to, corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms “person acting on CLEC’s behalf,” “personnel performing work on CLEC’s behalf,” and similar terms specifically include, but are not limited to, CLEC, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request of or as directed by CLEC and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by CLEC to perform make-ready work shall be deemed to be a person acting on CLEC’s behalf while performing such work at CLEC’s request.
- 3.31 Person acting on SBC MISSOURI’s behalf. The terms “person acting on SBC MISSOURI’s behalf,” “personnel performing work on SBC MISSOURI’s behalf,” and similar terms include both natural persons and firms and ventures of every type, including but not limited to corporations, partnerships, limited liability companies, sole proprietorships, and joint ventures. The terms “person acting on SBC MISSOURI’s behalf,” “personnel performing work on SBC MISSOURI’s behalf,” and similar terms specifically include, but are not limited to, SBC MISSOURI, its officers, directors, employees, agents, representatives, attorneys, contractors, subcontractors, and other persons or entities performing services at the request or on behalf of SBC MISSOURI and its respective officers, directors, employees, agents, and representatives. An authorized contractor selected by SBC MISSOURI to perform make-ready work shall be deemed to be a person acting on SBC MISSOURI’s behalf while performing such work at SBC MISSOURI’s request.
- 3.32 Pole. The term “pole” refers to all SBC MISSOURI poles subject to the Pole Attachment Act and the provisions of the Telecommunications Act of 1996 codified as 47 U.S.C. §§ 251(b)(4) and 271(c)(2)(B)(iii). Except as the context otherwise requires, the term “pole” refers only to utility poles and anchors which are

either owned or controlled by SBC MISSOURI and does not include cables and other telecommunications equipment attached to pole structures.

- 3.33 Pole Attachment. As defined in the Pole Attachment Act, 47 U.S.C. § 224(a)(4), the term “pole attachment” refers to “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” In this Appendix, except as the context otherwise requires, the term “pole attachment” refers to any attachment by a cable television system or provider of telecommunications service to a pole (and associated anchors) owned or controlled by SBC MISSOURI. The term “pole attachment” includes all such facilities attached to or supported by a SBC MISSOURI pole, including but not limited to cables, risers and U-guards, equipment boxes, drop wires, anchors, bolts, clamps, drive rings, guys, hooks, strands, and other hardware affixed to the pole. Groupings of associated pole attachments for billing purposes shall be consistent with the Pole Attachment Act and applicable rules, regulations, and commission orders. Except as otherwise authorized by applicable FCC rules, regulations, or orders, CLEC’s pole attachments occupying the same usable space (or otherwise associated with facilities occupying the same usable space on a pole) shall be treated as a single attachment for billing purposes.
- 3.34 Pole Attachment Act. The term “Pole Attachment Act” refers to those provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, now codified as 47 U.S.C. § 224, as those provisions may be amended from time to time.
- 3.35 Pre-license survey. The term “pre-license survey” refers to work and activities performed or to be performed by SBC MISSOURI or by persons acting on SBC MISSOURI’s behalf for the primary purpose of:
- (a) confirming or determining the existing availability and capacity of a pole duct, conduit, or right-of-way and identifying capacity, safety, reliability, or engineering concerns, if any, relating to CLEC’s application;
 - (b) confirming or determining the extent, if any, to which modifications to SBC MISSOURI’s poles, ducts, conduits, or rights-of-way are required to accommodate CLEC’s facilities;
 - (c) confirming or determining what make-ready work, if any, will be required to prepare SBC MISSOURI’s poles, ducts, conduits, or rights-of-way to accommodate CLEC’s facilities; and
 - (d) estimating the costs, if any, that CLEC will be required to pay for any such make-ready work or facilities modifications.
- 3.36 Pre-occupancy survey. The term “pre-occupancy survey” refers to work and activities performed or to be performed by CLEC or persons acting on behalf of CLEC for the primary purpose of enabling CLEC to determine:
- (a) whether SBC MISSOURI’s poles, ducts, conduits, or rights-of-way, in their existing condition, are suitable for CLEC’s intended use;
 - (b) the extent, if any, to which modifications of SBC MISSOURI’s poles, ducts, conduits, or rights-of-way will be proposed by CLEC to expand the capacity of SBC MISSOURI’s poles, ducts, conduits, or rights-of-way to accommodate CLEC’s facilities; and
 - (c) what make-ready work, if any, is required to prepare the poles, conduits, or conduit system to accommodate CLEC’s facilities.
- 3.37 Primary point of contact. The term “primary point of contact” refers to the persons designated by CLEC and SBC MISSOURI, respectively, to coordinate arrangements for CLEC’s access to SBC MISSOURI’s poles, ducts, conduits, and rights-of-way and records relating to such poles, ducts, conduits, and rights-of-way. SBC MISSOURI’s designated primary point of contact shall be the Utility Liaison Supervisor unless the parties have arranged for that function to be performed by a designated account representative who will serve as an intermediary between CLEC and the Utility Liaison Supervisor.
- 3.38 Rights-of-way. As used in this Appendix, the term “rights-of-way” refers generally to legal rights to pass over or use the land of another for limited purposes as defined in a statute, ordinance, easement, grant or other

conveyance. Rights-of-way include, but are not limited to public rights-of-way authorizing SBC MISSOURI to locate facilities on, under, or over public lands and roadways, servitudes created by private easements or obtained through the exercise of eminent domain authority enabling SBC MISSOURI to pass over, place facilities on, and have rights of ingress and egress to the and of another. Rights-of-way also include easements which, at the time of land development or subdivision, were dedicated for use by public or private utilities and are being occupied, in whole or in part, by SBC MISSOURI's facilities.

- 3.39 Sheath. The term "sheath" refers to an enclosed covering containing communications wires, fibers, or other communications media. A cable may include both inner and outer sheaths.
- 3.40 Spinning. The term "spinning" refers to a method of attaching a cable or inner-duct to a supporting strand. "Spinning" is sometimes referred to as "lashing."
- 3.41 State. When capitalized, the term "State" (as used in terms such as "this State") refers to the State of Missouri.
- 3.42 State Commission. The term "State Commission" refers to the Missouri Public Service Commission.
- 3.43 Strand. The term "strand" refers to support wires, typically stranded together, or other devices attached to a pole and connecting that pole to an anchor or to another pole for the purpose of increasing pole stability or supporting wires, cables, and associated facilities. The term "strand" includes, but is not limited to, strands sometimes referred to as "anchor strands," "anchor/guy strands," "down guys," "guy strands," "pole-to-pole guys," and "messengers."
- 3.44 Telecommunications Act of 1996. The term "Telecommunications Act of 1996" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, enacted February 8, 1996.
- 3.45 Third party. The terms "third party" and "third parties" refer to persons and entities other than the parties to this Appendix (that is, persons and entities other than CLEC and SBC MISSOURI).
- 3.46 Utility Liaison Supervisor ("ULS"). The terms "Utility Liaison Supervisor" and "ULS" refer to the person or persons designated by SBC MISSOURI to be responsible for handling and processing requests for access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way in this State. The term "ULS" connotes responsibility for handling a function and is not a job title. Except as otherwise specifically provided in this Appendix or in the parties' interconnection agreement, if any, the ULS shall serve as CLEC's single point of contact for arranging access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way and access to SBC MISSOURI's records relating to SBC MISSOURI's poles, ducts, conduits, and rights-of-way. The Utility Liaison Supervisor for this State is identified in EXHIBIT VIII.
- 3.47 Vault. The term "vault" includes central office vaults and controlled environment vaults ("CEVs"). Vaults may be connected to, but are not considered part of, SBC MISSOURI's conduit system. Access, if any, to vaults (and to ducts, conduits, and risers which serve no purpose other than to provide a means of entry to and exit from such vaults) shall be governed by the tariffs, agreements, or commission orders, if any, establishing arrangements for interconnection, collocation, and access to unbundled network elements, and not by this Appendix.
- 3.48 "Vicinity of" When used in terms such as "vicinity of SBC MISSOURI's conduit system," "vicinity of SBC MISSOURI's poles," "vicinity of SBC MISSOURI's rights-of-way," or "vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way," the term "vicinity of ..." includes sites on, within, near to, surrounding, or adjoining SBC MISSOURI's poles, ducts, conduits, and rights-of-way. These sites include, but are not limited to, all sites within a distance of 10 feet of any SBC MISSOURI pole, duct, conduit, or right-of-way.

ARTICLE 4: NATURE AND SCOPE OF AGREEMENT

- 4.01 Scope of Agreement. This Appendix establishes procedures for grants of non-discriminatory access to SBC MISSOURI poles, ducts, conduits, and rights-of-way located within this State, without regard to whether the site is located on public or private property.

- 4.02 No Transfer of Property Rights. Nothing contained in this Appendix or any license issued hereunder 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. The payment of fees and charges as provided by this Appendix and licenses issued hereunder shall not 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. No use, however extended, of SBC MISSOURI's poles, ducts, conduits, or rights-of-way shall create or vest (or be construed as creating or vesting) in CLEC any right, title, or interest in or to any real or personal property owned by SBC MISSOURI, and the placement of CLEC's facilities on or in SBC MISSOURI's poles, ducts, conduits and rights-of-way shall not create or vest in SBC MISSOURI any right, title, or interest in such facilities.
- 4.03 No Effect on SBC MISSOURI's Right to Abandon, Convey or Transfer Poles, Ducts, Conduits, or Rights-of-Way. Except as provided in subsections (a)-(b) of this section, nothing contained in this Appendix or any license subject to this Appendix shall in any way affect SBC MISSOURI's right to abandon, convey, or transfer to any other person or entity SBC MISSOURI's interest in any of SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- (a) SBC MISSOURI shall give CLEC no less than 60 days written notice prior to abandoning, conveying, or transferring any pole, duct, conduit, or right-of-way (1) to or in which CLEC has attached or placed facilities pursuant to this Appendix or (2) with respect to which CLEC has been assigned pole attachment or conduit occupancy 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.
- (b) Transfers or conveyances of poles, ducts, conduits, or rights-of-way to any entity controlling, controlled by, or under common control with SBC MISSOURI or to any entity which acquires or succeeds to ownership of substantially all of SBC MISSOURI's assets shall be subject to CLEC's rights under this Appendix and licenses subject to this Appendix.
- 4.04 No Effect on SBC MISSOURI's Rights to Manage its Facilities. Except to the extent expressly provided by the provisions of this Appendix and subject to the provisions of the Telecommunications Act of 1996 and other applicable laws, rules, and regulations, nothing contained in this Appendix shall be construed as limiting or interfering with SBC MISSOURI's rights to:
- (a) locate, relocate, move, replace, modify, maintain, and operate its own facilities (including but not limited to SBC MISSOURI's poles, ducts, conduits and rights-of-way, and any of SBC MISSOURI's facilities attached thereto or located therein) at any time and in any manner which SBC MISSOURI deems appropriate to serve its own customers, avail itself of new business opportunities, or otherwise meet its own business needs; or
- (b) enter into new agreements or arrangements with other persons or entities permitting them to attach or place their facilities on or in SBC MISSOURI's poles, ducts, conduits, or rights-of-way, provided, however, that such relocations, moves, replacements, modifications, maintenance, and operations or new agreements or arrangements shall not interfere with CLEC's pole attachment, right-of-way, or conduit occupancy use rights provided pursuant to this Appendix.
- 4.05 No Effect on CLEC's Rights to Manage its Own Facilities. This Appendix shall not be construed as limiting or interfering with CLEC's right to conduct its normal business operations in serving its customers or to avail itself of new business opportunities except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules or regulations.
- 4.06 No Right to Interfere with Facilities of Others. Except to the extent expressly provided by the provisions of this Appendix or by the Telecommunications Act of 1996 or other applicable laws, rules, or regulations, the provisions of this Appendix shall not be construed as authorizing either party to this Appendix, or persons acting on their behalf, to rearrange or interfere in any way with the facilities of the other party or joint users or with the use of or access to such facilities by the other party or joint users.

ARTICLE 5: ACCESS TO RIGHTS-OF-WAY

- 5.01 Public Rights-of-Way. SBC MISSOURI and CLEC agree that neither party has the right to restrict or interfere with the other party's access to public rights-of-way. SBC MISSOURI and CLEC shall each be responsible for obtaining their own rights-of-way and permission to use real or personal property owned or controlled by any governmental body, subject to the procedures set forth in Section 5.03 below.
- 5.02 Private Rights-of-Way Not Owned or Controlled by SBC MISSOURI. SBC MISSOURI and CLEC agree that neither party has the right to restrict or interfere with the other party's access to private rights-of-way not owned or controlled by SBC MISSOURI. Each party shall make its own, independent legal assessment of its right to enter upon or use the land or property of third-party property owners and shall bear all expenses, including legal expenses, involved in making such determinations, subject to the procedures set forth in Section 5.03 below.
- 5.03 Access to Associated Rights-of-Way. Each pole attachment and conduit occupancy license made under this Appendix shall include access to and use of all associated rights-of-way, including, but not limited to, rights-of-way required by CLEC for ingress, egress, or other access to any sites where SBC MISSOURI's solely or partly owned or controlled poles, manholes, conduit, ducts, or other parts of SBC MISSOURI's solely or partly owned or controlled conduit system are located, but only to the extent, if any, that SBC MISSOURI has the legal authority to grant such access and use. SBC MISSOURI also agrees to provide nondiscriminatory access to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures to the extent that collocation to such facilities is agreed or required by order of any court or governmental agency having jurisdiction over the subject matter. SBC MISSOURI agrees that it shall place no restrictions on CLEC's ability to construct, maintain, and monitor its facilities at these sites that are more restrictive than those SBC MISSOURI places on itself.
- (a) Although SBC MISSOURI shall afford access to rights-of-way owned or controlled by it and permit CLEC to utilize SBC MISSOURI's rights-of-way to the extent that SBC MISSOURI has legal authority to do so, CLEC acknowledges that SBC MISSOURI may not own or control certain rights-of-way to the extent necessary to permit CLEC full access to such rights-of-way. The following general principles shall be applied with respect to access to rights-of-way on third-party real estate:
- (1) CLEC shall first attempt to obtain right-of-way directly from the property owner.
- (2) If SBC MISSOURI has legal authority to permit access by CLEC to a right-of-way on third-party property, SBC MISSOURI will not restrict CLEC's use of the right-of-way.
- (3) If CLEC has the right of eminent domain under state law, CLEC shall independently attempt to obtain the right-of-way it seeks through the exercise of that right.
- (b) SBC MISSOURI and CLEC agree that dark fiber and unused four-wire copper cable are not considered "poles, conduits, and rights-of-way".
- 5.04 Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures. SBC MISSOURI will provide CLEC nondiscriminatory access, consistent with the requirements of the Pole Attachment Act and Telecommunications Act of 1996, and as provided in Sections 5.03 above, to rights-of-way containing Controlled Environment Vaults (CEVs), huts, cabinets, and other similar structures. SBC MISSOURI will place no restrictions on access to such rights-of-way that are more restrictive than those SBC MISSOURI places on itself; provided, however, that neither party shall conduct activities on such rights-of-way which interfere with the facilities of the other party, with the privacy of communications carried over the other party's network, or with the other party's access to and use of its own facilities. This section relates only to access to rights-of-way and shall not be construed as granting access to the CEVs, huts, cabinets, and similar structures located on such rights-of-way. Access, if any, to CEVs, huts, cabinets, and similar structures, and to ducts, conduits, and risers which serve no purpose other than to provide a means of entering or exiting such structures, shall be governed by the tariff, agreement, or order, if any, granting CLEC access to such structures.

ARTICLE 6: SPECIFICATIONS

- 6.01 Compliance with Requirements, Specifications, and Standards. CLEC agrees that CLEC's facilities attached to SBC MISSOURI's poles or occupying space in its 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.
- 6.02 Design to Minimize the Need for Access to SBC MISSOURI's Poles, Ducts, and Conduits. The parties shall each design their facilities to minimize the need for the parties to access SBC MISSOURI's poles, ducts, and conduits.
- 6.03 Infrequent Construction Techniques and Connectivity Solutions. Unless precluded by documented engineering criteria or written guidelines SBC MISSOURI applied to itself as of January 1, 1996, consistent with considerations of safety, reliability, and or engineering practices, SBC MISSOURI agrees to permit CLEC at its own expense to utilize the following techniques to avoid high or unusual expenditures: (a) placement of pole attachments on both the "field" side and "road" side of a pole; (b) placement of extension arms or stand-off brackets on poles; and (c) building conduit branches into SBC MISSOURI's conduit systems. CLEC acknowledges that use of the above techniques will be rare, and will be permitted only on a case-by-case basis.
- 6.04 Published Standards. SBC MISSOURI and CLEC agree that the following standards equally apply to either party with respect to facilities attached to or placed in SBC MISSOURI's poles, ducts, conduits, and rights-of-way and further agree that 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:
- (a) 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";
 - (b) the National Electrical Safety Code ("NESC"), published by the Institute of Electrical and Electronic Engineers, Inc. ("IEEE"); and
 - (c) the National Electrical Code ("NEC"), published by the National Fire Protection Association ("NFPA").
- 6.05 Additional Electrical Design Specifications: Conduit. The parties agree that, in addition to the specifications and requirements referred to in Sections 6.01-6.04 above, facilities placed in SBC MISSOURI's conduit system after the effective date of this Appendix shall meet all of the electrical design specifications set forth in this section.
- (a) No facilities shall be placed in SBC MISSOURI's conduit system in violation of FCC regulations, including regulations relating to electrical interference. In addition, neither party shall place any facility in SBC MISSOURI's conduit system which causes or may cause electrical interference with the facilities of the other party or joint users sufficient to jeopardize network integrity or degrade the quality of any communications services offered by either party or a joint user. If either party is notified by the other party or a joint user that its facilities are causing, or have the potential to cause, unacceptable levels of electrical interference, the party notified shall either correct the problem, remove the facility, or initiate good faith negotiations with the complaining party or joint user to resolve the issue.
 - (b) Facilities placed in SBC MISSOURI's conduit system shall not be designed to use the earth as the sole conductor for any part of the circuits.
 - (c) Facilities placed in SBC MISSOURI's conduit system and carrying more than 50 volts AC (rms) to ground or 135 volts DC to ground shall be enclosed in an effectively grounded sheath or shield.
 - (d) No coaxial cable shall be placed in SBC MISSOURI's conduit system unless such cable meets the voltage limitations of Article 820 of the National Electrical Code.
 - (e) Coaxial cable placed in SBC MISSOURI's conduit system may carry continuous DC voltages up to 1800 volts to ground where the conductor current will not exceed one-half ampere and where such cable has two separate grounded metal sheaths or shields and a suitable insulating jacket over the

outer sheath or shield. The power supply shall be so designed and maintained that the total current carried over the outer sheath shall not exceed 200 microamperes under normal conditions. Conditions which would increase the current over this level shall be cleared promptly.

- (f) CLEC shall not circumvent the corrosion mitigation measures of SBC MISSOURI or joint users.

6.06 Additional Physical Design Specifications: Conduit. Facilities placed in SBC MISSOURI's conduit system following the effective date of this Appendix shall meet all of the following physical design specifications:

- (a) Except as otherwise specifically agreed in this Appendix or licenses issued hereunder CLEC's facilities shall enter SBC MISSOURI's conduit system at locations consistent with the physical design specifications that SBC MISSOURI applies to itself (typically through a manhole) or at such other designated locations agreed upon in writing (e.g., through the licensing process) by the parties in accordance with Section 6.03 (infrequent construction techniques and connectivity solutions).
- (b) Cables bound or wrapped with cloth or having any kind of fibrous coverings or impregnated with an adhesive material shall not be placed in SBC MISSOURI's conduit or ducts.
- (c) The integrity of SBC MISSOURI's conduit system and overall safety of personnel require that "dielectric cable" be used within SBC MISSOURI's conduit system when a cable facility utilizes a duct or route shared in the same trench by any electric transmissions facility such as the facilities of a power utility.
- (d) New construction splices in cables (including but not limited to fiber optic and twisted pair cables) shall be located in manholes, pull boxes or handholes.

6.07 Efficient Use of Conduit. To ensure efficient use of conduits, SBC MISSOURI will, when cable diameters permit, install inner ducts in multiples that fully utilize duct space (typically three or four inner ducts in a full four-inch duct) as needed for SBC MISSOURI's own business purposes and to accommodate CLEC and other joint users; provided, however, that SBC MISSOURI shall not be required to install inner duct in anticipation of potential future requests for access by CLEC and other joint users.

6.08 Specifications Applicable to Connections: Conduit. Except as otherwise specifically agreed in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing, the following specifications apply to connections of CLEC's conduit to SBC MISSOURI's conduit system:

- (a) CLEC shall not bore, make, or enlarge any hole in, or otherwise structurally modify or alter any manhole, handhole, duct, conduit, or other facility which is part of SBC MISSOURI's conduit system except as provided in this Appendix or licenses issued hereunder, or as mutually agreed upon by the parties in writing.
- (b) Nothing contained in subsection (a) shall be construed as precluding CLEC or qualified personnel acting on CLEC's behalf from reattaching cable racks or performing similar routine work which is minor in nature and associated with the placing and splicing of cable.
- (c) Where CLEC's duct or facility physically connects with SBC MISSOURI's manhole the section of CLEC's facility which connects to SBC MISSOURI's manhole shall be installed by SBC MISSOURI or its contractor at CLEC's expense (which shall be SBC MISSOURI's actual costs or the price charged SBC MISSOURI by the contractor). SBC MISSOURI will perform this work in an interval consistent with the intervals SBC MISSOURI performs work for itself. If SBC MISSOURI's interval for beginning or completing this work does not meet CLEC's needs, CLEC as an authorized contractor may perform the work itself or use subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SBC MISSOURI and CLEC.
- (d) SBC MISSOURI will have the option to monitor the entrance and exit of CLEC's facilities into SBC MISSOURI's conduit system and the physical placement of CLEC's facilities in SBC MISSOURI's conduit system. Notice requirements for, and expenses associated with, this monitoring are addressed in Section 6.11 of this Appendix.

- (e) If CLEC constructs or utilizes a duct connected to SBC MISSOURI's conduit system, the duct and all connections between that duct and SBC MISSOURI's conduit system shall be sealed to prevent the entry of gases or liquids into SBC MISSOURI's conduit system. If CLEC's duct enters a building, it shall also be sealed where it enters the building and at all other locations necessary to prevent the entry of gases and liquids from the building into SBC MISSOURI's conduit system.

6.09 General Requirements Relating to Personnel, Equipment, Materials, and Public Safety. The parties contemplate that CLEC, its contractors, and other persons acting on its behalf will perform work for CLEC on, within, and in the vicinity of SBC MISSOURI's poles, ducts, conduits, and rights-of-way. The provisions of this section are intended to protect the integrity of the networks, facilities and operations of SBC MISSOURI, CLEC and joint users, to protect the health and safety of persons working on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, and rights-of-way, and to protect the public at large.

- (a) Neither party nor any person acting on such party's behalf shall permit any person to climb on or work on SBC MISSOURI's poles or in the vicinity of SBC MISSOURI's poles, or enter SBC MISSOURI's manholes or work within or in the vicinity of SBC MISSOURI's conduit system, unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system and to perform the work safely.
- (b) Neither party nor any person acting on such party's behalf shall permit any person acting on its behalf to perform any work on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way without first verifying, to the extent practicable, on each date when such work is to be performed, that conditions at the work site (including but not limited to the physical condition of the pole or any part of SBC MISSOURI's conduit system) are sufficiently safe for the work to be performed. If CLEC or any person acting on CLEC's behalf determines that the condition of the pole, duct, conduit, conduit system, or rights-of-way is not safe enough for the work to be performed, CLEC shall notify SBC MISSOURI of the condition of the pole or conduit system in question and shall not proceed with the work until CLEC is satisfied that the work can be safely performed.
- (c) Neither party nor any person acting on such party's behalf shall knowingly permit defective equipment or materials to be used on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- (d) When CLEC or personnel performing work on its behalf are working on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way located within, under, over, adjacent to, or in the vicinity of streets, highways, alleys or other traveled rights-of-way, CLEC and all personnel performing work on CLEC's behalf shall follow procedures which CLEC deems appropriate for the protection of persons and property. CLEC and its contractors shall be responsible, at all times, for determining and implementing the specific steps required to protect persons and property at the site. CLEC or its designated contractor will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers, and property from danger. CLEC and its contractors shall have sole responsibility for the safety of all personnel performing work on CLEC's behalf, for the safety of bystanders, and for insuring that all operations conform to current OSHA regulations and all other governmental rules, ordinances or statutes.
- (e) Neither party nor any persons acting on such party's behalf shall engage in any conduct which damages public or private property in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way or creates a hazard or nuisance on such property (including but not limited to a hazard or nuisance resulting from any abandonment of or failure to remove its facilities or any construction debris from the property, failure to erect warning signs or barricades as may be necessary to give notice to others of unsafe conditions on the premises while work performed on its behalf is in progress, or failure to restore the property to a safe condition after such work has been completed).
- (f) CLEC shall promptly suspend activities on, within, or in the vicinity of SBC MISSOURI's poles, ducts, or conduits, if notified by SBC MISSOURI that such activities create an unreasonable risk of

injury to persons or property (including unreasonable risks of service interruptions). CLEC shall not resume such activities on or in the vicinity of CLEC's poles until CLEC is satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified and shall not resume such activities within or in the vicinity of SBC MISSOURI's conduit system until both CLEC and SBC MISSOURI are satisfied that the work may safely proceed and that any hazardous conditions at the site have been rectified. In the event that SBC MISSOURI requires CLEC to suspend work activities and it is later determined that there was no reasonable basis for the work suspension, SBC MISSOURI agrees to compensate CLEC for the cost resulting from the delay.

- (g) All personnel acting on CLEC's behalf shall, while working on or in SBC MISSOURI's poles, ducts, conduits, or rights-of-way, carry with them suitable identification and shall, upon the request of any SBC MISSOURI employee or representative, produce such identification.
- (h) CLEC (and any person acting on CLEC's behalf) may report unsafe conditions on, within, or in the vicinity of SBC MISSOURI's poles or conduit system to SBC MISSOURI.

6.10 Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SBC MISSOURI's Conduit Systems. When SBC MISSOURI or CLEC, their contractors, and other persons acting on their behalf perform work on, within, or in the vicinity of SBC MISSOURI's ducts, conduits, and rights-of-way where such ducts or conduits are located, they will be guided by the following:

- (a) Except as may be mutually agreed upon by the parties in writing, CLEC shall not "rod" or clear any duct or inner duct in SBC MISSOURI's conduit system other than a duct or inner duct assigned to CLEC. Following the assignment of a specific duct or inner duct to CLEC, CLEC may request that SBC MISSOURI rod or clear the duct or inner duct. If the duct or inner duct cannot be cleared, SBC MISSOURI shall assign to CLEC the next available duct or inner duct. CLEC's request for assignment of the next available duct shall be in writing, may be transmitted to SBC MISSOURI via fax or other transmission media mutually agreed upon by the parties, and shall be processed within the same intervals applicable to the processing of similar requests by SBC MISSOURI's own personnel.
- (b) Personnel performing work within SBC MISSOURI's conduit system on either party's behalf shall not climb on, step on, or otherwise disturb the cables, air pipes, equipment, or other facilities located in any manhole or other part of SBC MISSOURI's conduit system.
- (c) Personnel performing work within or in the vicinity of SBC MISSOURI's conduit system (including any manhole) on either party's behalf shall, upon completing their work, make reasonable efforts to remove all tools, unused materials, wire clippings, cable sheathing and other materials brought by them to the work site.
- (d) All of CLEC's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SBC MISSOURI and applicable to SBC MISSOURI's own facilities.
- (e) CLEC's facilities shall be plainly identified with CLEC's name in each manhole with a firmly affixed permanent tag that meets the identification standards set by SBC MISSOURI for its own facilities.
- (f) Manhole pumping and purging required in order to allow work operations to proceed shall be performed in accordance with the requirements of Sections 6.14 and 6.15.
- (g) Planks or other types of platforms shall be supported only by cable racks.
- (h) Any leak detection liquid or device used by CLEC or personnel performing work on CLEC's behalf within or in the vicinity of SBC MISSOURI's conduit system shall be of a type approved by SBC MISSOURI and included on SBC MISSOURI's then-current list of approved types of leak-detection liquids and devices; provided, however, that CLEC may use any type of leak detection liquid or device which meets Bellcore's published standards if SBC MISSOURI has not provided CLEC SBC

MISSOURI's list of approved types of leak detection liquids or devices at least 60 days in advance of CLEC's work.

- (i) CLEC and its contractors shall be responsible for providing proper ventilation while work is being performed in SBC MISSOURI's conduit system on CLEC's behalf. Except for protective screens, no temporary cover shall be placed over an open manhole unless it is at least four feet above the surface level of the manhole opening.
- (j) Smoking or the use of any open flame is prohibited in manholes, in any other portion of the conduit system, or within 10 feet of any open manhole entrance.
- (k) Artificial lighting, when required by CLEC, will be provided by CLEC. Only explosion-proof lighting fixtures shall be used.
- (l) Neither SBC MISSOURI nor CLEC nor personnel performing work on its behalf shall allow any combustible gas, vapor, liquid, or material to accumulate in SBC MISSOURI's conduit system (including any manhole) during work operations performed within or in the vicinity of SBC MISSOURI's conduit system.
- (m) All parties shall abide by any laws, regulations, and ordinances regarding the use of spark producing tools, equipment, or devices (including but not limited to such tools as electric drills and hammers, meggers, breakdown sets, induction sets, and the like) in manholes or in any other portions of the conduit system.
- (n) Cable lubricants used in conduit systems shall be of a type or types approved by SBC MISSOURI and included on SBC MISSOURI's then-current list of approved types of cable lubricants; provided, however, that CLEC may use any type of cable lubricant which meets Bellcore's published standards if SBC MISSOURI has not provided CLEC SBC MISSOURI's list of approved types of cable lubricants at least 60 days in advance of CLEC's work.

6.11 Opening of Manholes and Access to Conduit. The following requirements apply to the opening of SBC MISSOURI's manholes and access to SBC MISSOURI's conduit system.

- (a) CLEC will notify SBC MISSOURI not less than 5 business days in advance before entering SBC MISSOURI'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. As a courtesy, CLEC shall, when feasible, provide SBC MISSOURI with 10 working days advance notice before entering SBC MISSOURI's conduit system.
- (b) The parties contemplate that CLEC may need to perform operations in SBC MISSOURI's conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated in subsection (a) above. Under these circumstances, CLEC shall notify SBC MISSOURI as soon as is reasonably possible of its intent to enter and perform work in the conduit system and SBC MISSOURI shall not, without due cause and justification, insist on literal compliance with the scheduling requirements of subsection (a) in such circumstances. SBC MISSOURI will establish procedures enabling SBC MISSOURI to receive notices from CLEC under this subsection 24 hours a day, seven days a week.
- (c) Each party must obtain any necessary authorization from appropriate authorities to open manholes for such party's own conduit work and operations therein.
- (d) A single authorized employee or representative of SBC MISSOURI may be present any time when CLEC or personnel acting on CLEC's behalf enter or perform work within SBC MISSOURI's conduit system. CLEC shall reimburse SBC MISSOURI for costs associated with the presence of SBC MISSOURI's authorized employee or representative. Each party must obtain any necessary authorization from appropriate authorities to open manholes.

- (e) SBC MISSOURI and CLEC further agree that CLC shall pay to SBC MISSOURI a penalty of \$5000.00 for each unauthorized entry into the conduit system.

6.12 OSHA Compliance. Each party agrees:

- (a) its facilities attached to SBC MISSOURI's poles or placed in SBC MISSOURI's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the Occupational Safety and Health Act (OSHA) and all rules and regulations promulgated thereunder and
- (b) all persons shall, when working on, within, or in the vicinity of SBC MISSOURI's poles or conduit system, comply with OSHA and all rules and regulations thereunder.

6.13 Environmental Contaminants in SBC MISSOURI's Conduit System. CLEC acknowledges that, from time to time, environmental contaminants may enter SBC MISSOURI's conduit system and accumulate in manholes or other conduit facilities.

- (a) CLEC may, at its expense, perform such inspections and tests at the site of any pole, duct, conduit, or right-of-way occupied by or assigned to CLEC as CLEC may deem necessary to determine the presence at such sites of environmental contaminants. SBC MISSOURI will assist CLEC, at CLEC's request and expense, in the performance of such inspections and tests.
- (b) SBC MISSOURI makes no representations to CLEC or personnel performing work on CLEC's behalf that SBC MISSOURI's poles, ducts, conduits, or rights-of-way will be free from environmental contaminants at any particular time. Before entering a manhole or performing any work within or in the vicinity of SBC MISSOURI's conduit system or any other site subject to access under this Appendix, CLEC or personnel acting on CLEC's behalf shall independently determine, to their satisfaction, whether such contaminants are present and conduct their work operations accordingly.
- (c) Each party shall promptly notify the other of environmental contaminants known by such party to be present on, within or in the vicinity of poles, ducts, conduits, or rights-of-way occupied by or assigned to CLEC if, in the sole judgment of such party, such environmental contaminants create a serious danger to (1) the health or safety of personnel working within or in the vicinity of the conduit or (2) the physical condition of the other party's facilities placed or to be placed within the conduit.
- (d) Nothing contained in this Appendix (including but not limited to the acknowledgments and representations set forth in this section) shall relieve either party from its responsibility to comply with all applicable environmental laws or its responsibility for any liability arising out of such party's failure to comply with such laws.

6.14 Compliance with Environmental Laws and Regulations. CLEC and SBC MISSOURI agree to comply with the following provisions relating to compliance with environmental laws and regulations.

- (a) All persons acting on CLEC's or SBC MISSOURI's behalf, including but not limited to CLEC's or SBC MISSOURI's employees, agents, contractors, and subcontractors, shall, when working on, within or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way, comply with all applicable federal, state, and local environmental laws, including but not limited to all environmental statutes, ordinances, rules, and regulations.

6.15 Compliance with Other Governmental Requirements (Including Aeronautical Navigation Safeguards). CLEC and SBC MISSOURI agree that their facilities attached to SBC MISSOURI's poles or placed in SBC MISSOURI's ducts, conduits, and rights-of-way shall be constructed, placed, maintained, repaired, and removed in accordance with the ordinances, rules, and regulations of any governing body having jurisdiction of the subject matter (including but not limited to any valid ordinances, rules, and regulations requiring permits, certificates, licenses or the like). CLEC and SBC MISSOURI shall comply with all statutes, ordinances, rules, regulations, and other laws requiring the marking and lighting of aerial wires, cables, and other structures to ensure that such wires, cables, and structures are not a hazard to aeronautical navigation.

- 6.16 Responsibility for Condition of Facilities. Each party will be responsible at all times for the condition of its facilities (including but not limited to those extending from SBC MISSOURI's poles, ducts, conduits, or rights-of-way directly to any other location) and for its compliance with the requirements and specifications of this article and all applicable laws, rules, regulations, and ordinances.

ARTICLE 7: PRIMARY POINTS OF CONTACT, ACCESS TO RECORDS, AND PRE-OCCUPANCY INSPECTIONS

- 7.01 Designation of Primary Points of Contact. Each party will, at the request of the other party, designate a primary point of contact to facilitate communications between the parties and the timely processing of CLEC's applications for access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way located within this State. Designations of primary points of contact will be made by written notices including the name, title, address, phone number, and fax number of the person designated as the primary point of contact; provided, however, that unless and until a different designation is made, SBC MISSOURI's primary point of contact shall be the Utility Liaison Supervisor identified in EXHIBIT VIII. Designation of primary points of contact pursuant to this section shall not affect notice requirements or other legal requirements set forth in other provisions of this Appendix or the parties' interconnection agreement.
- 7.02 Determinations by CLEC of Suitability and Availability. CLEC shall make its own, independent assessment of the suitability of SBC MISSOURI's poles, ducts, conduits, and rights-of-way for CLEC's intended purposes.
- 7.03 Access to Records Relating to SBC MISSOURI's Poles, Ducts, Conduits, and Rights-of-Way. This section establishes procedures through which certain records and information relating to SBC MISSOURI's poles, ducts, conduits, and rights-of-way will be made available to CLEC. Access to such records and information shall be conditioned on CLEC's execution of a nondisclosure agreement equivalent in substance to the Nondisclosure Agreement (SBC MISSOURI Pole, Duct, Conduit, and Rights-of-Way) attached to this Appendix as Exhibit V or such other nondisclosure agreement as shall be mutually acceptable to the parties, and no person acting on CLEC's behalf shall be granted access to such records and information without first signing such a nondisclosure agreement. CLEC shall reimburse SBC MISSOURI for all reasonable costs incurred by SBC MISSOURI in granting CLEC's requests for access to records and information under this section.
- (a) CLEC shall, after the effective date of this Appendix, have reasonable access to SBC MISSOURI's pole and conduit maps and records. CLEC shall be permitted to examine these records during regular business hours at a location where copies of such records are maintained or at such other location as may be mutually agreed upon by the parties. Access to such maps and records shall be by appointment only, and SBC MISSOURI shall make such maps and records available for inspection by CLEC on two business days notice.
- (b) The access described in subsection (a) shall include the right to make copies, at CLEC's expense. In all instances, such access shall include the ability to take notes and make drawings with references to those maps and records. No references to cable counts or circuit information may be included in any such copies, notes, or drawings. With respect to customer-specific information, CLEC copies, notes, or drawings may include only such information as needed for bona fide engineering and construction purposes. CLEC's copies, notes, and drawings may include estimates regarding the physical characteristics (such as size and weight) of cables when necessary to make engineering determinations regarding the capacity, safety, reliability, or suitability of SBC MISSOURI's poles, ducts, conduits, and rights-of-way for CLEC's intended uses.

SBC MISSOURI shall provide CLEC the best information available from SBC MISSOURI's current pole and conduit maps and records. SBC MISSOURI represents that such records reflect approximate geographical locations of the facilities depicted and may not accurately reflect information such as:

- (1) the exact location of the facilities depicted;
- (2) the physical size, characteristics, or condition of the facilities depicted;

- (3) the ducts or inner ducts presently occupied, assigned, or available within any particular conduit segment or manhole;
- (4) the arrangement of facilities attached to a pole, the position of facilities suspended between poles or their relationship to each other and to the ground, or the positioning of cables and other facilities housed within ducts, conduits, manholes or other portions of SBC MISSOURI's conduit system; and
- (5) other information which must be assessed before it can be determined that space is available on or in a pole, duct, or conduit for the attachment or occupancy of CLEC's facilities or that the pole, duct, or conduit depicted is suitable for CLEC's intended use.

7.04 Pre-Occupancy Inspection of Poles, Ducts, Conduits, and Rights-of-Way. CLEC shall be permitted to view and inspect specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis as provided in this section.

- (a) After the effective date of this Agreement, SBC MISSOURI shall permit CLEC to view specified poles, ducts, conduits, and rights-of-way on a pre-occupancy basis. Nothing contained in this section shall preclude CLEC from visually inspecting SBC MISSOURI's poles, ducts, conduits, or rights-of-way from any vantage point lawfully accessible to CLEC without SBC MISSOURI's permission.
- (b) CLEC shall not enter any SBC MISSOURI manhole for the purpose of performing a pre-occupancy inspection without complying with all applicable requirements set forth in Article 6 of this Appendix, including but not limited to the provisions of Section 6.11 relating to the opening of manholes.

ARTICLE 8: POLE, DUCT, AND CONDUIT SPACE ASSIGNMENTS

8.01 Selection of Space. SBC MISSOURI will select or approve the CLEC's selection of the space CLEC will occupy on poles or in conduit systems based upon the same criteria SBC MISSOURI applies to itself. In conduit systems owned or controlled by SBC MISSOURI, maintenance ducts (as defined in Section 3.25) shall not be considered available for CLEC's use except as specifically provided elsewhere in this Appendix. All ducts associated with the conduit system which are not assigned or occupied shall be deemed available for use by SBC MISSOURI, CLEC, and third parties entitled to access under the Pole Attachment Act.

8.02 Pole, Duct, and Conduit Space Assignments. Poles, and conduit system will be assigned to CLEC as provided in this section. Information received by SBC MISSOURI in connection with this section shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).

- (a) On receipt of CLEC's application for a pole attachment or conduit occupancy license the associated pole, duct, and conduit space shall be assigned to CLEC for a pre-occupancy period not to exceed 12 months, beginning with the date of such assignment. The assignment (and date and time) of assignment shall be logged and recorded in the appropriate SBC MISSOURI records.
- (b) CLEC's obligation to pay semi-annual pole attachment or conduit occupancy fees shall commence from the date the assignment or provisional assignment is logged and recorded in the appropriate SBC MISSOURI records.
- (c) During the 12-month assignment period following the date space is assigned to CLEC and entered into the appropriate SBC MISSOURI record, SBC MISSOURI shall not occupy or use such space without CLEC's permission, shall not assign such space to any party other than CLEC, and shall not knowingly permit any party other than CLEC to occupy or use such space without CLEC's permission except as otherwise specifically provided in this Appendix. The assignment to CLEC shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC MISSOURI record if CLEC has not occupied such assigned space within such 12-month period; provided, however, that if CLEC's failure to occupy the space within such 12-month period results from SBC MISSOURI's failure to perform make-ready work on schedule, the parties

shall negotiate a single extension of the assignment period, which extension shall not extend the assignment period beyond three months from the date of completion of SBC MISSOURI's make-ready work; and, provided further, that if CLEC can demonstrate that its failure to occupy the space within such 12-month period results from the actions of SBC MISSOURI or third parties other than persons acting on CLEC's behalf, or from acts of God, the assignment may be extended for a period no longer than three months from the date CLEC is first able to commence construction activities at the site involved. Assignments to third parties shall be subject to the same rules applicable to CLEC under this subsection. Extensions permitted under this subsection must be requested in writing before expiration of the original 12-month period and shall be recorded on the appropriate SBC MISSOURI records available for inspection under Section 7.03.

- (d) SBC MISSOURI may assign space to itself by making appropriate entries in the same records used to log assignments to CLEC and third parties. If SBC MISSOURI assigns pole, duct, or conduit space to itself, such assignment shall automatically lapse 12 months after the date the assignment has been entered into the appropriate SBC MISSOURI record if SBC MISSOURI has not occupied such assigned space within such 12-month period; provided, however, that if SBC MISSOURI's failure to occupy the space within such 12-month period results from the actions of CLEC or third parties other than persons acting on SBC MISSOURI's behalf, or from acts of God, SBC MISSOURI's assignment may be extended for a period no longer than three months from the date SBC MISSOURI is able to commence construction at the site involved. Extensions permitted under this subsection must be recorded before expiration of the original 12-month period on the appropriate SBC MISSOURI records available for inspection under Section 7.03.
- (e) If facilities modifications, capacity expansions, or other make-ready work are required due to the assignment of space to CLEC or SBC MISSOURI under this section, the party to whom such space has been assigned shall reimburse the person or entity incurring the costs for such facilities modifications, capacity expansions, or make-ready work, if the party to whom such space has been assigned fails to occupy the assigned space within the 12-month assignment period or any extension thereof.
- (f) Except as provided in subsections (e)-(f) above, assignments shall not be extended, renewed, or sequentially repeated in any manner (other than by actual occupancy) that enables CLEC, SBC MISSOURI, or any joint user to preclude access by others to unused pole attachment or conduit occupancy space for any period greater than 12 months after the date of initial assignment.

ARTICLE 9: APPLICATIONS AND PRE-LICENSE SURVEYS

- 9.01 Licenses Required. CLEC shall apply in writing for and receive a license before attaching facilities to specified SBC MISSOURI poles or placing facilities within specified SBC MISSOURI ducts or conduits, manholes, or handholes. License applications and information received by SBC MISSOURI in connection with such applications shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information).
- 9.02 Application Form. To apply for a pole attachment or conduit occupancy license under this Appendix, CLEC shall submit to SBC MISSOURI two signed copies of the appropriate application forms. SBC MISSOURI represents that the forms specified in subsections (a) and (b) are forms in use prior to the effective date of this Appendix and that SBC MISSOURI plans to revise such forms to conform to the provisions of this Appendix and to streamline the application process. The parties therefore agree that the forms specified in subsections (a) and (b) shall be interim forms only. SBC MISSOURI reserves the right to change the format and content of these forms upon 60 days written notice to CLEC.
 - (a) To apply for a pole attachment license, CLEC shall submit to SBC MISSOURI two signed copies of SBC MISSOURI's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9433. An application for a pole attachment license shall not be complete or subject to processing by SBC MISSOURI until these forms have been submitted to SBC MISSOURI; provided, however, that such forms shall be deemed to be substantially complete if

they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9433 and SW-9434, are attached to this Appendix as parts of Exhibit III.

- (b) To apply for a conduit occupancy license, CLEC shall submit to SBC MISSOURI two signed copies of SBC MISSOURI's Form SW-9434 ("Access Application and Make-Ready Authorization") together with completed Form SW-9435 ("Conduit Occupancy"). An application for a conduit occupancy license shall not be complete or subject to processing by SBC MISSOURI until these forms have been submitted to SBC MISSOURI; provided, however, that such forms shall be deemed to be substantially complete if they contain the information specified in subsections (c)-(g) below, as applicable. Copies of Forms SW-9434 and SW-9435, are attached to this Appendix as parts of Exhibit III.
- (c) Each application for a license under this Appendix shall include the following information, at a minimum:
 - (1) the poles, ducts, and conduits (including all manholes) along CLEC's proposed route to or within which CLEC desires to attach or place its facilities, as well as associated maps and manhold detailed butterfly drawings;
 - (2) a description of the facilities to be attached to SBC MISSOURI's poles and a description of the facilities to be placed within each component of SBC MISSOURI's conduit system (including but not limited to ducts, conduits, manholes, and handholes) along the proposed route; and
 - (3) for poles, the proposed points of attachment.
- (d) Facilities descriptions which apply to multiple pole attachments or conduit occupancies need only be described once on any form. Facilities descriptions shall include, at a minimum, the following information:
 - (1) the number and types of cables, including the physical size (diameter) and weight (weight per foot);
 - (2) the number and types of strands, if any, which will be used to support the cables, including the rated holding capacity expressed in thousand pound increments (e.g., 2.2M) of such strands; and,
 - (3) sufficient information to identify and describe the physical characteristics (size, dimensions, and weight) of permitted apparatus enclosures and other facilities to be attached to SBC MISSOURI's poles or placed in SBC MISSOURI's conduit system.
- (e) When it appears to CLEC that facilities modification, capacity expansion, or make-ready work, may be required to accommodate CLEC's access requests, CLEC shall describe the facilities modification, capacity expansion or make-ready work which CLEC proposes. CLEC shall also describe its intent to use any infrequent construction techniques or connectivity solutions under Section 6.03 to avoid high or unusual expenditures and its reasons for the utilization of such techniques or solutions.
- (f) CLEC acknowledges that the poles along a particular pole line or route may include poles owned by firms (such as electric utilities) other than SBC MISSOURI, that it may be necessary for SBC MISSOURI to rearrange its facilities or perform other make-ready work on poles other than poles it owns or controls in order to accommodate CLEC's request for access to SBC MISSOURI's poles and that, at the time an application is submitted. CLEC shall identify all poles utilized by SBC MISSOURI (without regard to ownership) along the proposed route. If CLEC does not identify all poles, CLEC may contract with SBC KANSAS to do so, at CLEC's expense.
- (g) Each application for a license under this Appendix shall be accompanied by a construction schedule showing CLEC's projected dates for beginning and completing construction at the sites specified in the application. Information on this schedule may be used by SBC MISSOURI's

engineering and outside plant construction personnel in scheduling work required to process CLEC's applications and scheduling such capacity expansions, make-ready work, and facilities modifications, if any, as may be necessary to accommodate CLEC's facilities.

9.03 Cooperation in the Application Process. The orderly processing of applications submitted by CLEC and other parties seeking access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way requires good faith cooperation and coordination between SBC MISSOURI's personnel and personnel acting on behalf of CLEC and other firms seeking access. The parties therefore agree to the following transitional procedures which shall remain in effect during the term of this Appendix unless earlier modified by mutual agreement of the parties.

- (a) Before submitting a formal written application for access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way, CLEC shall make a good faith determination that it actually plans to attach facilities to or place facilities within the poles, ducts, conduits, or rights-of-way specified in the application. Applications shall not be submitted for the purpose of holding or reserving space which CLEC does not plan to use or for the purpose of precluding SBC MISSOURI or any other provider of telecommunications services from using such poles, ducts, conduits, or rights-of-way.
- (b) CLEC shall only submit applications for access to poles, ducts, conduits, and rights-of-way which it plans to use within one year following the date access is granted and will use its best efforts to submit applications in an orderly manner in accordance with CLEC's needs. If CLEC contemplates the need to submit more than 10 applications within any 45-day period with respect to poles, ducts, conduits, and rights-of-way within the territory of any single SBC MISSOURI construction district, CLEC shall give SBC MISSOURI 30 days notice with a priority list as noted in 9.04.
- (c) No more than 300 poles (and their associated anchors and anchor/guy strands) shall be the subject of any single pole attachment license application.
- (d) No more than 20 manholes shall be the subject of any single conduit occupancy license application.

9.04 CLEC's Priorities. When CLEC has multiple applications on file within a single SBC MISSOURI construction district, CLEC shall, at SBC MISSOURI's request, designate its desired priority of completion of pre-license surveys, capacity expansions, make-ready work, and facilities modifications with respect to all such applications.

9.05 Pre-license Survey. A pre-license survey (including a review of records and field inspection, if necessary) will be completed by SBC MISSOURI after CLEC has submitted its written license application as specified in Section 9.02 of this Appendix. SBC MISSOURI will not, without due cause and justification, repeat pre-occupancy survey work performed by CLEC.

- (a) The field inspection portion of the pre-license survey, which includes the visual inspection of existing pole and conduit facilities, shall be performed by SBC MISSOURI or its authorized representative. Primary purposes of the field inspection will be to enable SBC MISSOURI to (1) confirm or determine the facilities modification, capacity expansion, and make-ready work, if any, necessary to accommodate CLEC's facilities; (2) plan and engineer the facilities modification, capacity expansion, and make-ready work, if any, required to prepare SBC MISSOURI's poles, ducts, conduits, rights-of-way, and associated facilities for CLEC's proposed attachments or occupancy; and (3) estimate the costs associated with such facilities modification, capacity expansion, or make-ready work.
- (b) The administrative processing portion of the pre-license survey (which includes processing the application and reviewing records) will be performed by SBC MISSOURI.
- (c) Before performing any portion of the pre-license survey, SBC MISSOURI shall obtain CLEC's written authorization to perform such work. Authorization may be given, when possible, when the application is submitted.

ARTICLE 10: ISSUANCE AND DENIAL OF LICENSES

(INCLUDING FACILITIES MODIFICATIONS, CAPACITY EXPANSIONS, AND MAKE-READY WORK)

- 10.01 Response Within 45 Days. Within 45 days of CLEC's submission of a license application pursuant to Section 9.02 of this Appendix, or within such other period of time as may be mutually agreed upon in writing by the parties, SBC MISSOURI shall respond to the application. The response shall state whether the application is being granted or denied. If denial is anticipated, or if SBC MISSOURI personnel involved in the processing of CLEC's request for access become aware of hazardous substances at the site requested by CLEC, SBC MISSOURI shall promptly advise CLEC and shall, at CLEC's request, discuss alternatives to denial and issues associated with the presence of such hazardous substances.
- (a) If access is granted, SBC MISSOURI shall, no later than 45 days after CLEC's submission of the license application, further advise CLEC in writing (1) what facilities modifications, capacity expansions, or make-ready work, if any, will be required to prepare SBC MISSOURI's pole or conduit facilities (2) provide CLEC an estimate of charges for such facilities modifications, capacity expansions, or make-ready work, (3) disclose to CLEC any hazardous substances known by SBC MISSOURI to be present at the site.
 - (b) If access is denied, SBC MISSOURI will confirm the denial in writing by the 45th day after the receipt by SBC MISSOURI of CLEC's completed application. The denial of access shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how such evidence and information relates to a denial of access for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. If CLEC in its completed application sets forth in writing specific proposals for expanding capacity, the denial statement shall specifically address such proposals.
 - (c) CLEC agrees that if, at any time prior to the 45th day, it has determined that it no longer seeks access to specific poles, ducts, or conduit facilities, CLEC shall promptly withdraw or amend its application, thereby minimizing the administrative burdens on SBC MISSOURI of processing and responding to the application.
- 10.02 Obligation to Construct or Modify Facilities: Capacity Expansions. The parties agree that SBC MISSOURI may grant access subject to CLEC's approval of such make-ready work or facilities modifications as may be required to expand capacity to accommodate CLEC's request, in which event CLEC shall either accept such conditions, initiate good faith negotiations to explore other potential accommodations, or withdraw its request for access. If SBC MISSOURI does not offer to expand capacity and denies CLEC's request for access, SBC MISSOURI shall promptly notify CLEC of such determination. SBC MISSOURI shall not deny CLEC's request for access on lack of capacity grounds when capacity can be expanded as provided in this section and in Section 6.03 of this Appendix dealing with infrequent construction techniques and connectivity solutions:
- (a) SBC MISSOURI agrees to modify its outside plant facilities to the extent that CLEC agrees to pay for the modification at cost, such as but not limited to cable consolidations, as long as such modifications are consistent with capacity, safety, reliability, and engineering considerations which SBC MISSOURI would apply to SBC MISSOURI if the work were performed for its own benefit. SBC MISSOURI may recover from CLEC the costs of modifying its outside plant facilities for CLEC's space. SBC MISSOURI will require payment of the full amount in advance subject to the true-up of the estimated costs with the actual costs.
 - (b) SBC MISSOURI agrees, to install inner duct in a timely manner to accommodate CLEC's space needs in accordance with the same time interval SBC MISSOURI provides to itself. If SBC MISSOURI's interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC, as a qualified contractor, may perform the inner-duct installation itself or utilize authorized subcontractor(s) selected by CLEC from a list of mutually agreeable qualified "bidders" developed by SBC MISSOURI and CLEC. When inner duct is installed by CLEC or an authorized contractor in SBC MISSOURI's conduit system, SBC MISSOURI CLEC shall bear all other installation expenses. Inner duct installed by CLEC or an authorized contractor shall be installed in accordance with the same standards and practices which would be followed if the inner duct were

being installed by SBC MISSOURI or SBC MISSOURI's contractors. CLEC will indemnify SBC MISSOURI for damages, resulting from CLEC's self-provisioning of the inner-duct.

- (c) SBC MISSOURI agrees to, remove cables at expense that are retired or inactive (dead) to free-up requested duct and pole space, provided that such removal is reasonably feasible (i.e. cable pulls easily without incident). If a section of cable is "frozen" in a duct and would require excavation to remove, CLEC, at its option, may excavate the obstruction or request that SBC MISSOURI excavate the obstruction. The excavation would be at CLEC's expense.
- (d) Reimbursement will be in accordance with Section 10.08 - Reimbursement for the Creation or Use of Additional Capacity.

10.04 Performance of Make-ready Work. Except as otherwise specifically provided in Section 10.02 and in this section, make-ready work shall be performed by SBC MISSOURI or by authorized contractors or other persons acting on SBC MISSOURI's behalf and shall be performed by SBC MISSOURI in accordance with the same time intervals which would be applicable if SBC MISSOURI were performing the work for itself.

- (a) CLEC and SBC MISSOURI will mutually establish and maintain a list of authorized contractors who may be selected by CLEC to perform make-ready work when SBC MISSOURI's interval for beginning or completing such make ready work does not meet CLEC's needs.
- (b) If SBC MISSOURI's interval for beginning or completing make-ready work does not meet CLEC's needs, CLEC may, as an authorized contractor, perform the make-ready work itself or arrange for the work to be performed by an authorized contractor selected by CLEC from the applicable list of authorized contractors. Subject to the availability of personnel, CLEC may also request that SBC MISSOURI perform the work on an expedited basis; provided, however, that make-ready work will not be performed on an expedited basis unless CLEC first approves any overtime or premium rates or charges associated with performance of the work on an expedited basis.
- (c) From time to time, additional contractors or other vendors may be approved by SBC MISSOURI to perform make-ready work in the event that the workload exceeds the capacity of the authorized contractors on the approved list to perform the make-ready work in a timely manner.
- (d) Nothing contained in this section authorizes CLEC, any authorized contractor selected by CLEC, or any other person acting on CLEC's behalf to consolidate SBC MISSOURI's cables, **remove slack, or perform any splicing (wire work) on SBC KANSAS' cables.**

10.05 Make-ready Work. If SBC MISSOURI determines that make-ready work will be necessary to accommodate CLEC's facilities, SBC MISSOURI shall promptly notify CLEC of the make-ready work proposed to enable the accommodation of CLEC's facilities.

- (a) The notice shall be given in writing no later than 45 days after the receipt by SBC MISSOURI of CLEC's completed application pursuant to Section 9.02 of this Appendix or within such other period of time as may be mutually agreed upon in writing by the parties.
- (b) The notice will include SBC MISSOURI's estimate of make-ready charges, which estimate shall be stated on SBC MISSOURI Form SW-9434 ("Access Application and Make-Ready Authorization"), a copy of which is attached hereto as part of EXHIBIT III.
- (c) CLEC shall have 20 days (the "acceptance period") after receiving SBC MISSOURI's estimate of make-ready charges to authorize completion of the make-ready work proposed by SBC MISSOURI or to advise SBC MISSOURI of its willingness to perform the proposed make-ready work itself. If CLEC advises SBC MISSOURI that it is willing to perform the make-ready work proposed by SBC MISSOURI in accordance with a design approved by SBC MISSOURI, and SBC MISSOURI's specifications, SBC MISSOURI will not, without due cause and justification, refuse to accept CLEC's offer to perform the work. Authorization shall be accomplished by CLEC's signing the estimate and returning it to SBC MISSOURI within the 20-day acceptance period.

- (d) Within the 20-day acceptance period, the parties may negotiate modifications of the make-ready work to be performed. If the parties reach agreement through negotiation, a new estimate shall be prepared and authorization shall be accomplished by CLEC's signing the revised estimate and returning it to SBC MISSOURI within the original 20-day acceptance period, or within such period of time as may be mutually agreed upon by the parties.
 - (e) If CLEC does not sign and return the estimate within the 20-day acceptance period, or within such other period of time as may be mutually agreed upon in writing by the parties, CLEC shall notify SBC MISSOURI in writing by the 20th day whether CLEC is withdrawing its application, electing to perform the make-ready work itself as provided in subsection (c) or electing to treat SBC MISSOURI's make-ready requirements as a denial of access.
 - (1) If no such notice is given by the 20th day, or such later date as may be mutually agreed upon by the parties, SBC MISSOURI shall contact CLEC to determine whether CLEC intends to withdraw its application. CLEC shall be deemed to have withdrawn its application if, in response to SBC MISSOURI's inquiry, CLEC does not immediately sign and return the estimate to SBC MISSOURI.
 - (2) If CLEC timely notifies SBC MISSOURI that it is electing to treat SBC MISSOURI's make-ready requirements as a denial of access, SBC MISSOURI shall, within 20 days after receiving the notice, provide CLEC with a written statement explaining its decision to grant access only if the specified make-ready work is performed. The statement shall be specific, shall include all relevant evidence and information supporting SBC MISSOURI's decision to grant access only if the specified make-ready work is performed, and shall explain how such evidence and information relates to SBC MISSOURI's decision for reasons of lack of capacity, safety, reliability, or generally applicable engineering purposes. The statement shall also set forth the basis for SBC MISSOURI's make-ready proposals and specifically address SBC MISSOURI's rationale for rejecting CLEC's alternative written proposals, if any.
- 10.06 Multiple Applications. Applications shall be processed on a first-come, first-served basis. Applications filed on the same date shall be treated as having been filed simultaneously and shall be processed accordingly.
- 10.07 Payments to Others for Expenses Incurred in Transferring or Arranging Their Facilities. CLEC shall make arrangements with the owners of other facilities attached to SBC MISSOURI's poles or occupying space in SBC MISSOURI's conduit system regarding reimbursement for any expenses incurred by them in transferring or rearranging their facilities to accommodate the attachment or placement of CLEC's facilities to or in SBC MISSOURI's poles, ducts, and conduits.
- 10.08 Reimbursement for the Creation or Use of Additional Capacity. CLEC acknowledges that if any additional capacity is created as a result of make-ready work performed to accommodate CLEC's facilities. CLEC shall not have any preferential right to utilize such additional capacity in the future and shall not be entitled to any fees subsequently paid to SBC MISSOURI for the use of such additional capacity. If SBC MISSOURI utilizes additional space or capacity created at CLEC's expense, SBC MISSOURI reimburse CLEC on a pro-rata basis for SBC MISSOURI's share, if any, of CLEC's capacity expansion costs, to the extent reimbursement is required by applicable rules, regulations, and commission orders. SBC MISSOURI will notify the CLEC if any entity, including SBC MISSOURI, attaches facilities to additional capacity on SBC MISSOURI Structure created at CLEC's expense. SBC MISSOURI shall not be required to collect or remit any such amounts to CLEC, to resolve or adjudicate disputes over reimbursement between CLEC and Other.
- 10.09 License and Attachment. After all required make-ready work is completed, SBC MISSOURI will issue a license confirming that CLEC may attach specified facilities to SBC MISSOURI's poles or place specified facilities in SBC MISSOURI's conduit system. CLEC shall have access to attach or place only those facilities specifically described in licenses subject to this Appendix, and no others.

ARTICLE 11: CONSTRUCTION OF CLEC'S FACILITIES

- 11.01 Responsibility for Attaching and Placing-Facilities. Each party shall be responsible for the actual attachment of its facilities to SBC MISSOURI's poles and the actual placement of its facilities in SBC MISSOURI'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. In this regard, each party shall be solely responsible for (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and attachment of its facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, and rights-of-way.
- 11.02 Construction Schedule. After the issuance of a license, CLEC shall provide SBC MISSOURI with an updated construction schedule and shall thereafter keep SBC MISSOURI informed of anticipated changes in the construction schedule. Construction schedules received by SBC MISSOURI shall be subject to the provisions of Article 27 of this Appendix (Confidentiality of Information). Construction schedules required by this section shall include, at a minimum, the following information:
- (a) the name, title, business address, and business telephone number of the manager responsible for construction of the facilities;
 - (b) the names of each contractor and subcontractor that will be involved in the construction activities;
 - (c) the estimated dates when construction will begin and end; and
 - (d) the approximate dates when CLEC or personnel working on CLEC's behalf will be performing construction work in connection with the attachment of CLEC's facilities to SBC MISSOURI's poles or the placement of CLEC's facilities in any part of SBC MISSOURI's conduit system.

ARTICLE 12: USE AND ROUTINE MAINTENANCE OF CLEC'S FACILITIES

- 12.01 Use of CLEC's Facilities. Each license granted under this Appendix authorizes CLEC to have access to CLEC's facilities on or within SBC MISSOURI's poles, ducts, and conduits as needed for the purpose of serving CLEC's customers.
- 12.02 Routine Maintenance of CLEC's Facilities. Each license granted under this Appendix authorizes CLEC to engage in routine maintenance of facilities located on or within SBC MISSOURI's poles, ducts, and conduits pursuant to such license. Routine maintenance does not include the replacement or modification of CLEC's facilities in any manner which results in CLEC's attachments differing substantially in size, weight, or physical characteristics from the attachments described in CLEC's license.
- 12.03 Installation of Drive Rings and J-Hooks. CLEC may install drive rings and J-hooks on SBC MISSOURI's poles for the attachment of drop wires as specified in this section.
- (a) Drive rings and J-hooks may be installed as specified in pole attachment licenses issued to CLEC.
 - (b) If attachment space has already been licensed to CLEC on a given SBC MISSOURI pole, CLEC may install drive rings and J-hooks within the space assigned to CLEC (e.g., typically six inches above and six inches below CLEC's point of attachment on the pole if the point of attachment is in the center of the space assigned to CLEC) without applying for or obtaining a new or amended license. No additional attachment charges shall apply with respect to drive rings and J-hooks installed in CLEC's licensed attachment space.
- 12.04 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 person or entity (including but not limited to SBC MISSOURI, CLEC, other local service providers, and other joint users) 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 MISSOURI. A person or entity using the maintenance duct for non-emergency maintenance or repair activities shall immediately notify SBC MISSOURI of such use and must

either vacate the maintenance duct within 30 days or, with SBC MISSOURI'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 a 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 party 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.

- 12.05 Responsibility for Maintenance of Facilities. Each party shall be solely responsible for maintaining its own facilities and (a) paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with the maintenance of such party's facilities and (b) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, and rights-of-way.
- 12.06 Information Concerning the Maintenance of CLEC's Facilities. Promptly after the issuance of a license, CLEC shall provide SBC MISSOURI with the name, title, business address, and business telephone number of the manager responsible for routine maintenance of CLEC's facilities and shall thereafter notify SBC MISSOURI of changes to such information. The manager responsible for routine maintenance of CLEC's facilities shall, on SBC MISSOURI's request, identify any authorized contractor or other person performing maintenance activities on CLEC's behalf at a specified site.

ARTICLE 13: MODIFICATION OF CLEC'S FACILITIES

- 13.01 Notification of Planned Modifications. CLEC shall notify SBC MISSOURI in writing at least 30 days before adding to, relocating, replacing or otherwise modifying its facilities attached to a pole, or located in any SBC MISSOURI duct or conduit. The notice shall contain sufficient information to enable SBC MISSOURI to determine whether the proposed addition, relocation, replacement, or modification is permitted under CLEC's present license or requires a new or amended license. No notice shall be required for such routine modifications as the installation or placement of drive rings or J-hooks, terminals, and other ancillary apparatus routinely used in providing service to customers, having no effect on the structural integrity of SBC MISSOURI's poles, ducts, or conduits, and having no effect on the ability of SBC MISSOURI or joint users to use or have access to SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- 13.02 New or Amended License Required. A new or amended license will be required if the proposed addition, relocation, replacement, or modification:
- (a) requires that CLEC occupy additional space on SBC MISSOURI's poles (except on a temporary basis in the event of an emergency);
 - (b) requires that CLEC occupy additional space (other than space in the maintenance duct in accordance with Sections 12.04, 13.03, and 15.02 of this Appendix) in any SBC MISSOURI duct or conduit except on a temporary basis in the event of an emergency;
 - (c) results in the facilities attached being different from those described as authorized attachments in CLEC's present application, current license, notice of intent to occupy, or license application and supplemental documentation (e.g., different duct or size increase causing a need to re-calculate storm loadings, guying, or pole class);
 - (d) requires additional holding or loading capacity on a permanent basis.
- 13.03 Use of Maintenance Duct in Connection with Facility Modifications and Replacements. Non-emergency access to the maintenance duct in connection with facilities modifications and replacements shall be subject to the provisions of Section 12.04 of this Appendix.
- 13.04 Replacement of Facilities and Spinning/Overlashing Additional Cables. CLEC may replace existing facilities with new facilities occupying the same pole, duct, or conduit space, and may spin or 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. CLEC will be required to ensure pole loadings are not exceeded.

- 13.05 Streamlined Procedures for the Issuance of Amended Licenses. SBC MISSOURI may streamline procedures for the issuance of amended licenses with respect to proposed additions, relocations, replacements, or modifications of CLEC's facilities when it appears to SBC MISSOURI that the proposed additions, relocations, replacements, or modifications will not require make-ready work by SBC MISSOURI, will not interfere with SBC MISSOURI's use of its poles, conduit systems, or facilities attached or connected thereto or contained therein, and will not interfere with the use of existing facilities attached or connected thereto or contained therein by joint users.

ARTICLE 14: REARRANGEMENT OF CLEC'S FACILITIES

- 14.01 Notice of Planned Modifications. The parties acknowledge that the Pole Attachment Act recites in part that "Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment." The parties further acknowledge that the FCC, in its First Report and Order in CC Docket No. 96-98, recites that "... absent a private agreement establishing notification procedures, written notification of a modification must be provided to parties holding attachments on the facility to be modified at least 60 days prior to the commencement of the physical modification itself." This article is intended by the parties to alter the above-described notification requirements only as provided in Section 14.02(b) below.
- 14.02 Rearrangement of CLEC's Facilities at SBC MISSOURI's Request. CLEC acknowledges that, from time to time, it may be necessary or desirable for SBC MISSOURI to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by SBC MISSOURI's own business needs or by factors outside of SBC MISSOURI's control, such as the decision by a municipality to widen streets or the decision by another person or entity to seek access to SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- (a) CLEC agrees that CLEC will cooperate with SBC MISSOURI and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by CLEC 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 statutes, rules, regulations, and commission orders, including the Pole Attachment Act and rules, regulations and commission orders thereunder.
 - (b) CLEC shall make all rearrangements of its facilities within 60 days after receiving written notification by SBC MISSOURI of the required rearrangements. SBC MISSOURI may request that such modification be made within a shorter period of time, in which event CLEC shall not refuse to comply such request without due cause and justification. In determining due cause and justification, the following factors, among others, may be considered:
 - (1) the circumstances under which the rearrangements are sought (e.g., street-widening project, request by a competing provider for access);
 - (2) the timeliness of SBC MISSOURI's request to CLEC;
 - (3) the nature and number of rearrangements sought;
 - (4) the impact on the ability of the parties and joint users to meet customer service needs; and
 - (5) risks of service interruption to customers of the parties and joint users.
 - (c) Nothing contained in this article shall preclude CLEC from advising SBC MISSOURI, within 60 days from the date of the notice, of its desire to add to or modify its existing attachments.

ARTICLE 15: EMERGENCY REPAIRS AND POLE REPLACEMENTS

- 15.01 Applicability. The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to SBC MISSOURI's poles to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly and that it is highly desirable that all service providers utilizing SBC MISSOURI's poles, ducts, and conduits enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements it is expected that disputes will be immediately resolved at the site among the affected parties based upon the criteria set forth in Section 15.05 of this Appendix. The parties further agree that the provisions of this article shall apply in the absence of more comprehensive agreements relating to emergency repairs.
- 15.02 Responsibility for Emergency Repairs; Access to Maintenance Duct. In general, each party plans and practices which will enable it to make such emergency repairs.
- (a) 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.
 - (b) Maintenance ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by any person or entity (including but not limited to SBC MISSOURI, CLEC, other local service providers, and other joint users) with facilities in the conduit section in which the maintenance duct is located; provided, however, that a party using the maintenance duct for emergency repair activities shall immediately notify SBC MISSOURI of such use and must either vacate the maintenance duct within 30 days or, with SBC MISSOURI'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 a 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 party occupies the maintenance duct. The parties agree not to exceed 30 days' use except in unusual emergencies that may require longer than 30 days to rectify.
 - (c) If necessary, other unoccupied ducts may be used on a short-term basis when the maintenance duct is unavailable. Any such use shall be subject to the same rules applicable to the maintenance duct and shall be subject to the rights of any party or joint user to whom such duct has been assigned.
- 15.03 Designation of Emergency Repair Coordinators and Other Information. For each SBC MISSOURI construction district, CLEC shall provide SBC MISSOURI with the emergency contact number of CLEC's designated point of contact for coordinating the handling of emergency repairs of CLEC's facilities and shall thereafter notify SBC MISSOURI of changes to such information.
- 15.04 Reporting of Conditions Requiring Emergency Repairs. CLEC shall notify SBC MISSOURI at the earliest practicable opportunity after discovering any condition on or in any of SBC MISSOURI's poles, ducts, conduits, or rights-of-way requiring emergency repairs to SBC MISSOURI's facilities and SBC MISSOURI shall notify CLEC at the earliest practicable opportunity after discovering any condition on or in any of SBC MISSOURI's poles, ducts, conduits, or rights-of-way requiring emergency repairs to CLEC's facilities.
- 15.05 Order of Precedence of Work Operations; Access to Maintenance Duct and Other Unoccupied Ducts in Emergency Situations. When notice and coordination are practicable, SBC MISSOURI, CLEC, 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 in accordance with the following principles:
- (a) Emergency service restoration work requirements shall take precedence over other work operations.

- (b) Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, 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 and 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.
 - (c) SBC MISSOURI 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 are unable to reach prompt agreement; provided, however, that these decisions shall be made by SBC MISSOURI on a nondiscriminatory basis in accordance with the principles set forth in this section.
- 15.06 Unilateral Corrective Action. When SBC MISSOURI or CLEC reasonably believes that, due to the condition of either party's facilities placed on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way, there is an immediate or imminent threat to the safety or health of employees or any other person, to the physical integrity or functioning of SBC MISSOURI's or CLEC's facilities, or SBC MISSOURI's or CLEC's ability to meet its service obligations, SBC MISSOURI or CLEC may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole, or detached or partially detached from supporting racks or wall supports within a manhole, SBC MISSOURI or CLEC may reattach them as provided in this section but shall not be obligated to do so.
 - (a) Before performing any corrective work involving facilities, SBC MISSOURI or CLEC shall attempt to notify the other party. After such notice has been given, the parties shall coordinate corrective work.
 - (b) When an emergency situation exists such that advance notice and coordination are not practicable, SBC MISSOURI or CLEC may perform corrective work without first giving notice to the other, and shall promptly notify the other of the corrective work performed and the reason why notice was not given.
- 15.07 Emergency Pole Replacements. CLEC agrees to cooperate fully with SBC MISSOURI when emergency pole replacements are required.
 - (a) When emergency pole replacements are required, SBC MISSOURI shall promptly make a good faith effort to contact CLEC to notify CLEC of the emergency and to determine whether CLEC will respond to the emergency in a timely manner.
 - (b) If notified by SBC MISSOURI that an emergency exists which will require the replacement of a pole, CLEC shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a SBC MISSOURI replacement pole, the transfer shall be in accordance with SBC MISSOURI's placement instructions.
 - (c) If CLEC is unable to respond to the emergency situation immediately, CLEC shall so advise SBC MISSOURI and thereby authorize SBC MISSOURI (or any joint user sharing the pole with SBC MISSOURI) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on CLEC's behalf.
- 15.08 Expenses Associated with Emergency Repairs. Each party shall bear all reasonable expenses arising out of or in connection with any emergency repairs of its facilities and transfers or rearrangements of its facilities associated with emergency pole replacements made in accordance with the provisions of this article.
 - (a) 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.

- (b) CLEC agrees to reimburse SBC MISSOURI for the costs incurred by SBC MISSOURI for work performed by SBC MISSOURI on CLEC's behalf in accordance with the provisions of this article; provided, however, that when the costs incurred by SBC MISSOURI are for work performed in part for CLEC and in part for SBC MISSOURI and third parties, CLEC shall only reimburse SBC MISSOURI for CLEC's share of the costs.

ARTICLE 16: INSPECTION BY SBC MISSOURI OF CLEC'S FACILITIES

- 16.01 SBC MISSOURI's Right to Make Periodic or Spot Inspections. SBC MISSOURI shall have the right, but not the duty, to make periodic or spot inspections at any time of CLEC's facilities attached to SBC MISSOURI's poles or placed within SBC MISSOURI's ducts, conduits, or rights-of-way. Such inspection may be conducted for the purpose of determining whether facilities attached to SBC MISSOURI's poles or placed in SBC MISSOURI's conduit system are in compliance with the terms of this Appendix and licenses hereunder, SBC MISSOURI may charge CLEC for inspection expenses only if the inspection reflects that CLEC is in substantial noncompliance with the terms of this Appendix. If the inspection reflects that CLEC's facilities are not in compliance with the terms of this Appendix, CLEC shall bring its facilities into compliance promptly after being notified of such noncompliance and shall notify SBC MISSOURI in writing when the facilities have been brought into compliance.
- 16.02 Report of Inspection Results. SBC MISSOURI will provide CLEC the results of any inspection of CLEC's facilities performed under Section 16.01 of this Appendix.
- 16.03 Post-Construction Inspections. SBC TEXAS, at CLEC's expense, may conduct a post-construction inspection of CLEC's attachment to SBC TEXAS' poles, conduits or rights-of-way for the purpose of determining the conformance of the attachments to the occupancy permit. SBC TEXAS will provide CLEC advance written notice of proposed date and time of the post-construction inspection. CLEC may accompany SBC TEXAS on the post-construction inspection.

ARTICLE 17: TAGGING OF FACILITIES AND UNAUTHORIZED ATTACHMENTS

- 17.01 Facilities to Be Marked. CLEC shall tag or otherwise mark all of CLEC's facilities placed on or in SBC MISSOURI's poles, ducts, conduits, and rights-of-way in a manner sufficient to identify the facilities as CLEC's facilities.
- 17.02 Removal of Untagged or Unauthorized Facilities. Subject to the provisions of subsections (a)-(c) of this section, SBC MISSOURI may, without notice to any person or entity, remove from SBC MISSOURI's poles or any part of SBC MISSOURI's conduit system any untagged or unmarked facilities, including any such facilities owned or used by CLEC, if SBC MISSOURI determines that such facilities are not the subject of any current license authorizing their continued attachment to SBC MISSOURI's poles or occupancy of SBC MISSOURI's conduit system and are not otherwise lawfully present on SBC MISSOURI's poles or in SBC MISSOURI's conduit system.
 - (a) Before removing any such untagged or unmarked facilities, SBC MISSOURI shall first attempt to determine whether the facilities are being used by CLEC or any other firm, are authorized by any license subject to this Appendix, or are otherwise lawfully present on SBC MISSOURI's poles or in SBC MISSOURI's conduit system.
 - (b) SBC MISSOURI shall not remove untagged or unmarked facilities which are thought to be operational without first making reasonable efforts to (1) determine the identity of the owner or other person or entity thought to be responsible for the facilities and (2) give advance written notice to such person or entity.
 - (c) If the facilities appear to be facilities which are subject to a current license granted to CLEC under this Appendix, or if the facilities are otherwise lawfully present on SBC MISSOURI's poles or in SBC MISSOURI's conduit system, SBC MISSOURI shall give written notice to CLEC requesting CLEC to tag or mark the facilities within 60 days and CLEC shall either tag the facilities within 60-

day period, advise SBC MISSOURI in writing of its schedule for tagging the facilities, or notify SBC MISSOURI in writing that it disclaims ownership of or responsibility for the facilities. If CLEC disclaims ownership of or responsibility for the facilities, CLEC shall disclose to SBC MISSOURI the identity of the owner or other party thought by CLEC to be responsible for the facilities.

- (d) If any of CLEC's facilities for which no license is presently in effect are found attached to SBC KANSAS' poles or within any part of SBC KANSAS' conduit system or rights-of-way, SBC KANSAS shall send a written notice to CLEC advising CLEC that no license is presently in effect with respect to the facilities. Within 30 days of receiving such notice, CLEC shall acknowledge receipt of the notice and submit to SBC KANSAS, in writing, an application for a new or amended license with respect to such facilities. CLEC shall be liable to SBC KANSAS for all fees and charges associated with the unauthorized attachments. Such fees and charges shall continue to accrue until the unauthorized attachments are removed from SBC KANSAS' poles, conduits 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 CLEC and its predecessors had continuously complied with all applicable SBC KANSAS licensing requirements. In addition, CLEC 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 CLEC is notified by SBC KANSAS of the unauthorized attachment or occupancy. CLEC shall also rearrange or remove its unauthorized facilities at SBC KANSAS' request to comply with applicable placement standards and shall remove its facilities from any space occupied by or assigned to SBC KANSAS or another entity within 30 days of receiving notice to do so. CLEC shall pay SBC KANSAS for all costs incurred by SBC KANSAS in connection with any rearrangements, modifications or replacements necessitated as a result of the presence of CLEC's unauthorized facilities. All fees and charges associated with the unauthorized attachments shall be due and payable 30 days after the date of the bill or invoice stating such fees and charges. If CLEC does not obtain a new or amended license with respect to unauthorized facilities within the specified period of time, SBC KANSAS shall by written notice advise CLEC to remove its unauthorized facilities within 60 days from the date of notice and CLEC 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 KANSAS may, at SBC KANSAS' option, remove CLEC's facilities at CLEC's expense.

- 17.03 Updating of Plant Location Records. CLEC shall furnish SBC MISSOURI, upon request, with such information as may from time to time be necessary for SBC MISSOURI to correct and update SBC MISSOURI's pole and conduit maps and records, cable plat maps, and other plant location records, if any, recording or logging assignments of pole, duct, and conduit space.

ARTICLE 18: REMOVAL OF CLEC'S FACILITIES

- 18.01 Responsibility for Removing Facilities. CLEC shall be responsible for and shall bear all expenses arising out of in connection with the removal of its facilities from SBC MISSOURI's poles, ducts, conduits, and rights-of-way. Such removals shall be performed in accordance with the provisions of this article.
- (a) CLEC shall give SBC MISSOURI, when practicable, at least 30 days' advance notice in writing of its intent to remove facilities from any part of SBC MISSOURI's conduit system and the proposed method of removal. The notice shall include the locations of the facilities to be removed, the name, telephone number of the manager responsible for the removal of the facilities, and the estimated dates when the removal of the facilities will begin and end.
- (b) CLEC shall, if requested by SBC MISSOURI to do so, place a pull mandrel (slug) through all or any specified part of the duct which was occupied by CLEC.
- (c) Except as otherwise agreed upon in writing by the parties, CLEC must, after removing its facilities, plug all previously occupied ducts at the entrances to SBC MISSOURI's manholes (if SBC MISSOURI would itself plug the ducts under the same circumstances) in accordance with the

standards set by SBC MISSOURI for its operations, provided that such standards have been communicated in writing to CLEC at least 10 days in advance of the removal of CLEC's facilities.

- (d) CLEC shall be solely responsible for the removal of its own facilities and for (1) paying all persons and entities which provide materials, labor, access to real or personal property, or other goods or services in connection with the removal of CLEC's facilities from SBC MISSOURI's poles, ducts, conduits, or rights-of-way and (2) directing the activities of all such personnel while they are physically present on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- (e) When CLEC no longer intends to occupy space on a pole or in a conduit CLEC will provide written notification to SBC MISSOURI that it wishes to terminate the license with respect to such space and will remove its facilities from the space described in the notice. Upon removal of CLEC's facilities, the license shall terminate and the space shall be available for reassignment.

- 18.02 Removal of Facilities Not in Active Use. At SBC MISSOURI's request, CLEC shall remove from SBC MISSOURI's poles, ducts, conduits, and rights-of-way any of CLEC's facilities which are no longer in active use; provided, however, that CLEC shall not be required to remove such facilities when due cause and justification exists for allowing them to remain in place. CLEC shall not be required to remove retired or inactive (dead) cables that have been overlashed by other facilities which remain in active use unless removal expenses are paid by the person or entity requesting removal of such facilities. CLEC shall not be required to remove cables that would require excavation to remove unless the person or entity requesting removal of such cables bears the expenses of such excavation in a manner analogous to the provisions of Section 10.02(c) of this Appendix. CLEC shall not abandon any of its facilities by leaving them on SBC MISSOURI's poles, in SBC MISSOURI's ducts, conduits, or rights-of-way, at any location where they may block or obstruct access to SBC MISSOURI's poles or any part of SBC MISSOURI's conduit system, or on any public or private property (other than property owned or controlled by CLEC) in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way.
- 18.03 Removal Following Termination of License. CLEC shall remove its facilities from SBC MISSOURI's poles, ducts, conduits, or rights-of-way within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after termination of the license authorizing the attachment of such facilities to SBC MISSOURI's poles or the placement of such facilities in SBC MISSOURI's ducts, conduits, or rights-of-way.
- 18.04 Removal Following Replacement of Facilities. Except as provided in Section 18.02, CLEC shall remove facilities no longer in service from SBC MISSOURI's poles or conduit system within 60 days, or within such other period of time as shall be mutually agreeable to the parties, after the date CLEC replaces existing facilities on a pole or in a conduit with substitute facilities on the same pole or in the same conduit; provided, however, that removal of facilities from the maintenance duct shall be governed by Sections 12.04, 13.03, and 15.02 of this Appendix and not by this subsection.
- 18.05 Notice of Completion of Removal Activities. CLEC shall give written notice to SBC MISSOURI stating the date on which the removal of its facilities from SBC MISSOURI's poles, ducts, conduits, and rights-of-way has been completed. Charges shall continue to accrue with respect to such facilities until CLEC's facilities have been removed, pull mandrels (slugs) have been pulled if required by Section 18.01(b) of this Appendix, CLEC has plugged all previously occupied ducts at the entrances to SBC MISSOURI's manholes as required by Section 18.01(c) of this Appendix, and the notice required by this section has been given.
- 18.06 Notice of SBC MISSOURI's Intent to Remove Facilities. If CLEC fails to remove its facilities from SBC MISSOURI's poles or conduit system, in accordance with the provisions of Sections 18.01 and 18.05 of this Appendix, SBC MISSOURI may remove such facilities 60 days after giving CLEC written notice of its intent to do so. The notice shall state:
- (a) the date when SBC MISSOURI plans to commence removal of CLEC's facilities, and that CLEC may remove the facilities at CLEC's sole cost and expense at any time before the date specified;
 - (b) SBC MISSOURI's plans with respect to disposition of the facilities removed; and

- (c) that CLEC's failure to remove the facilities or make alternative arrangements with SBC MISSOURI for removal and disposition of the facilities shall constitute an abandonment of the facilities and of any interest therein.
- 18.07 Removal of Facilities by SBC MISSOURI. If SBC MISSOURI removes any of CLEC's facilities pursuant to this article, CLEC shall reimburse SBC MISSOURI for SBC MISSOURI's costs in connection with the removal, storage, delivery, or other disposition of the removed facilities.
- 18.08 Reattachment or Subsequent Attachment Following Removal. After CLEC's facilities have been properly removed pursuant to the provisions of this article, neither the removed facilities nor replacement facilities shall be attached to SBC MISSOURI's poles or placed in SBC MISSOURI's conduit system until CLEC has first submitted new applications for the facilities and complied with the provisions of this Appendix.
- 18.09 Termination of Licenses After Removal of Facilities. CLEC agrees to provide written notice to SBC MISSOURI when it ceases to use facilities attached to SBC MISSOURI's poles or placed in any part of SBC MISSOURI's conduit system. Upon the giving of such notice and the removal of such facilities, CLEC's license with respect to such facilities and the space occupied by those facilities shall terminate.

ARTICLE 19: RATES, FEES, CHARGES, AND BILLING

- 19.01 Rates and Administrative Fees. The following rates and administrative fees shall apply during the terms of the parties' Interconnection Agreement and shall not be increased or decreased except as provided herein or by Commission order.
- (a) Rates for Pole Attachments and Conduit Occupancy. In accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, CLEC shall pay SBC MISSOURI rates of \$2.35 per year per pole attachment and \$0.40 per duct foot per year for conduit occupancy, until such time as the Federal Communications Commission promulgates amended rules governing pole attachment and conduit occupancy rates. Conduit occupancy rates apply to manhole occupancy, calculated to the center point of the manhole. Pole attachment and conduit occupancy rates charged by SBC MISSOURI to CLEC under this Appendix will then be adjusted in accordance with the FCC's rules on a going-forward basis.
- (b) Administrative Fees. As provided by the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, SBC MISSOURI shall be allowed to charge administrative fees to CLEC. The amount charged by SBC MISSOURI to CLEC for administrative fees shall be identical to the amount charged by SBC MISSOURI to CATV providers. Further, in accordance with the Missouri Public Service Commission's arbitration order in Case No. TO-97-40, if the FCC promulgates rules governing the assessment of administrative fees, those rules shall apply to administrative fees charged by SBC MISSOURI to CLEC on a going-forward basis.
- (c) Partial Duct and Inner Duct Occupancy Rates. SBC MISSOURI's rates for partial duct and inner duct occupancy shall be determined in accordance with the Pole Attachment Act and applicable rules, regulations, and Commission orders thereunder. Partial duct and inner duct rates shall be standardized rather than determined on a case-by-case basis which requires individual analysis of conduit sections occupied. If two or more cable facilities occupy a duct that has not been subdivided by inner duct, a half-duct occupancy rate will apply for each cable facility placed in the duct. A half-duct occupancy rate will apply to the first facility placed by CLEC in a previously unoccupied duct that has not been subdivided by inner duct if the presence of CLEC's cable facility does not render the other half of the duct unusable by others. A half-duct rate shall apply to each inner duct occupied. If the FCC promulgates rules governing rates for partial duct and inner duct occupancy, those rules shall apply, on a going forward basis, to partial duct and inner duct occupancy rates charged to CLEC by SBC MISSOURI under this Appendix.
- 19.02 This section intentionally left blank.
- 19.03 Semiannual Attachment and Occupancy Fees. SBC MISSOURI's semiannual fees for attachments to SBC MISSOURI's poles and occupancy of SBC MISSOURI's ducts and conduits are specified in the Pricing

Schedule. For all attachments to SBC MISSOURI's poles and occupancy of SBC MISSOURI's ducts and conduits, CLEC agrees to pay SBC MISSOURI's semiannual charges as specified in Pricing Schedule.

- 19.04 Billing for Attachment and Occupancy Fees. Semiannual attachment and occupancy fees under this Appendix and licenses issued hereunder shall be payable in advance. Fees for pole attachments shall be based on the number of pole attachments for which licenses have been issued as of the date of billing by SBC MISSOURI, shall be determined in accordance with the schedule of charges set forth in Exhibit I, and shall be payable semiannually in advance. Fees for conduit occupancy shall be based on the number of duct feet subject to occupancy by CLEC under licenses issued as of the date of billing by SBC MISSOURI, shall be determined in accordance with the schedule of charges set forth in the Pricing Schedule, and shall be payable semiannually in advance. Pole attachment and conduit occupancy space assigned to CLEC prior to the issuance of a license shall be billed in the same manner as if a license had been issued.
- (a) Bills shall be submitted to CLEC for two semiannual billing periods, the first period including charges for the months of January through June and the second including charges for the months of July through December.
 - (b) Charges associated with newly licensed pole attachments and conduit occupancy shall be prorated on a daily basis and billed with the next semiannual bill.
 - (c) Charges shall be adjusted and retroactively prorated on a daily basis following the removal of CLEC's facilities (in accordance with Article 18) and shall be retroactively adjusted as a credit on the next semiannual bill.
- 19.04 Pre-license Survey Fees. With respect to pre-license surveys conducted by SBC MISSOURI pursuant to Section 9.05 of this Appendix, SBC MISSOURI may charge CLEC cost-based pre-license survey fees pursuant to such methodologies as shall be approved by the Missouri Public Service Commission following the filing by SBC MISSOURI of any required study providing cost justification for the imposition of pre-license survey fees.
- 19.05 Make-Ready Charges. CLEC agrees to pay make-ready charges, if any, as specified in this section. SBC MISSOURI may recover from CLEC the costs of make-ready work performed by SBC MISSOURI or persons acting on SBC MISSOURI's behalf. SBC MISSOURI will require payment of the full amount in advance, subject to true up
- 19.05 Charges for Work Performed by SBC MISSOURI Employees. Except as otherwise specifically required by applicable commission orders, SBC MISSOURI's charges to CLEC for work performed by SBC MISSOURI employees pursuant to this Appendix shall be computed by multiplying the fully loaded hourly rates for such employees times the number of hours required to perform the work. Disputes over SBC MISSOURI's charges for work performed by SBC MISSOURI employees, including disputes between the parties concerning the number of hours required to perform the work, shall be subject to the dispute resolution procedures of Article 30. Notwithstanding the execution of this Appendix, CLEC shall have the right to challenge the methodology utilized by SBC MISSOURI to determine hourly rates for SBC MISSOURI employees at any time in any forum having jurisdiction over the subject matter.
- 19.06 Due Date for Payment. For all fees and charges other than make ready charges, each bill or invoice submitted by SBC MISSOURI to CLEC for any fees or charges under this Appendix shall state the date that payment is due, which date shall be not less than 60 days after the date of the bill or invoice. CLEC agrees to pay each such bill or invoice on or before the stated due date.

ARTICLE 20: PERFORMANCE AND PAYMENT BONDS

- 20.01 Bond May Be Required. SBC MISSOURI may require CLEC, authorized contractors, and other persons acting on CLEC'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 their respective obligations arising out of or in connection with this Appendix only as provided in subsections (a)-(b) of this section. Bonds shall not be required for entities meeting all self-insurance requirements of Section 22.02 of this Appendix.

- (a) If CLEC elects to perform facilities modification, capacity expansion, or make-ready work under Section 6.08(c) or Sections 10.02-10.05 of this Appendix, SBC MISSOURI may require CLEC, authorized contractors, and other persons acting on CLEC's behalf to execute bonds equivalent to those which would be required by SBC MISSOURI if the work had been performed by contractors, subcontractors, or other persons selected directly by SBC MISSOURI. No bonds shall be required of CLEC, authorized contractors, or other persons acting on CLEC's behalf except in those situations where a bond would be required if the work were being performed on SBC MISSOURI's behalf.
- (b) No other bond shall be required of CLEC to secure obligations arising under this Appendix in the absence of due cause and justification.
- (c) If a bond or similar form of assurance is required of CLEC, an authorized contractor, or other person acting on CLEC's behalf, CLEC shall promptly submit to SBC MISSOURI, upon request, 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 canceled, changed or materially altered without first providing SBC MISSOURI 60 days written notice.
- (d) SBC MISSOURI may communicate directly with the issuer of any bond issued pursuant to this section to verify the terms of the bond, to confirm that the bond remains in force, and to make demand on the issuer for payment or performance of any obligations secured by the bond.

ARTICLE 21: INSURANCE

21.01 Insurance Required. CLEC shall comply with the insurance requirements specified in this section.

- (a) Unless CLEC has provided proof of self-insurance as permitted in Section 22.02 below, CLEC shall obtain and maintain in full force and effect, for so long as this Appendix remains in effect, insurance policies specified in Exhibit IV of this Appendix. Each policy shall name SBC MISSOURI as an additional insured and shall include provisions requiring the insurer to give SBC MISSOURI notice of any lapse, cancellation, or termination of the policy or any modification to the policy affecting SBC MISSOURI's rights under the policy, including but not limited to any decrease in coverage or increase in deductibles.
- (b) Exclusions from coverage or deductibles, other than those expressly permitted in EXHIBIT IV, must be approved in writing by SBC MISSOURI.
- (c) Authorized contractors and other contractors performing work on, within, or in the vicinity of SBC MISSOURI's poles, ducts, conduits, or rights-of-way on CLEC's behalf shall be required to meet the same insurance requirements applicable to contractors performing similar work on SBC MISSOURI's behalf. CLEC shall be responsible for securing compliance by its contractors with this requirement and shall be liable to SBC MISSOURI for any damages resulting from its failure to do so.
- (d) Self-insurance shall be permitted for persons and entities (including but not limited to CLEC and authorized contractors) meeting the self-insurance requirements set forth in Section 22.02 of this Appendix.

21.02 Proof of Insurance or Self-insurance. Proof of insurance or self-insurance shall be made pursuant to the provisions of this section.

- (a) CLEC shall submit to SBC MISSOURI adequate proof (as determined by SBC MISSOURI) that the companies insuring CLEC are providing all coverages required by this Appendix. CLEC's insurers shall provide SBC MISSOURI with certifications that the required coverages will not be canceled, changed, or materially altered (e.g., by increasing deductibles or altering exclusions from coverages) except after 30 days written notice to SBC MISSOURI.
- (b) SBC MISSOURI will accept certified proof of a person or entity's qualification as a self-insurer for Workers' Compensation and Employers Liability, where self-insurance is permitted, upon receipt of

a current copy of a Certificate of Authority to Self-insure issued by the Workers' Compensation Commission of this State. SBC MISSOURI will accept self-insurance by a person or entity in lieu of other Commercial General Liability and Automobile Liability Coverage if such person or entity warrants that its net worth, as shown by its most recent audited financial statement with no negative notes, is at least 10 times the minimum liability limits set forth in Exhibit IV and SBC MISSOURI is satisfied that such person or entity will be able to meet its liability obligations under this Appendix.

- 21.03 Licensing Contingent on Proof of Insurance. All insurance required in accordance with Exhibit IV, or self-insurance as permitted in Section 22.02, must be in effect before SBC MISSOURI will issue pole attachment or conduit occupancy licenses under this Appendix and shall remain in force until all of CLEC's facilities have been removed from SBC MISSOURI's poles, ducts, conduits, and rights-of-way.
- 21.04 Failure to Obtain or Maintain Coverage. CLEC's failure to obtain and maintain the required levels and types of insurance coverage required under this Appendix may be grounds for termination of this Appendix and licenses subject to policies of insurance required under this Appendix will be canceled or changed in any manner which will result in CLEC's failure to meet the requirements of this Appendix, SBC MISSOURI may terminate this Appendix and all licenses subject to this Appendix not less than 60 days after giving CLEC written notice of its intention to do so, and such termination shall be effective on the termination date specified in the notice unless CLEC has obtained (or made arrangements satisfactory to SBC MISSOURI to obtain) the required coverage from another source. In the alternative, SBC MISSOURI may, in its sole discretion, elect to take such action as may be necessary to keep the policy in effect with the required coverages.

ARTICLE 22: TERMINATION OF AGREEMENT OR LICENSES; REMEDIES FOR BREACHES

- 22.01 Termination of Appendix Due to Non-Use of Facilities. CLEC shall, by written notice to SBC MISSOURI, terminate this Appendix if CLEC ceases to do business in this State, or ceases to make active use of SBC MISSOURI's poles, ducts, conduits, and rights-of-way in this State.
- 22.02 Limitation, Termination, or Refusal of Access Due to Certain Material Breaches. CLEC's access to SBC MISSOURI's poles, ducts, conduits, and rights-of-way will not materially interfere with or impair service over any facilities of SBC MISSOURI or any joint user, cause material damage to SBC MISSOURI's plant or the plant of any joint user, impair the privacy of communications carried over the facilities of SBC MISSOURI or any joint user, or create serious hazards to health or safety of any persons working on, within, or in the vicinity of SBC MISSOURI's poles, ducts, rights-of-way or to the public. Upon reasonable notice and opportunity to cure, SBC MISSOURI may limit, terminate or refuse access if CLEC violates this provision; provided, however, that such limitation, termination or refusal will be limited to CLEC's access to poles, ducts, conduits, and rights-of-way located in the SBC MISSOURI construction district in which the violation occurs, shall be as narrowly limited in time and geographic scope as may be necessary to enable CLEC to adopt suitable controls to prevent further violations, and shall be subject to review, at CLEC's request, pursuant to the dispute resolution procedures set forth in this Appendix (or, if applicable, the parties' Interconnection Agreement) or, as permitted by law, before any court, agency, or other tribunal having jurisdiction over the subject matter. In the event CLEC invokes dispute resolution procedures or seeks review before a court, agency, or other tribunal having jurisdiction over the subject matter, the limitation, termination, or refusal of access may be stayed or suspended by agreement of the parties or by order of the tribunal having jurisdiction over the parties' dispute.
- 22.03 Notice and Opportunity to Cure Breach. In the event of any claimed breach of this Appendix by either party, the aggrieved party may give written notice of such claimed breach as provided in this section.
- (a) The notice shall set forth in reasonable detail:
- (1) the conduct or circumstances complained of, together with the complaining party's legal basis for asserting that a breach has occurred;
 - (2) the action believed necessary to cure the alleged breach; and

- (3) any other matter the complaining party desires to include in the notice.
- (b) Except as provided in Section 24.02 and subsection (c) of this section, the complaining party shall not be entitled to pursue any remedies available under this Appendix or relevant law unless such notice is given and (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 (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; provided, however, that nothing contained in this section shall preclude either party from invoking the dispute resolution procedures set forth in Article 30 of this Appendix, or any complaint or dispute resolution procedures offered by the FCC or State Commission, at any time.
- (c) Nothing contained in this section shall preclude either party from filing a complaint or bringing suit in any court, agency, or other tribunal of competent jurisdiction to restrain or enjoin any conduct of the other party which threatens the complaining party with irreparable injury, loss or damage without first giving the notice otherwise required by subsection (b).

ARTICLE 23: CONFIDENTIALITY OF INFORMATION

- 23.01 Information Provided by CLEC to SBC MISSOURI. Except as otherwise specifically provided in this Appendix, all company-specific and customer-specific information submitted by CLEC to SBC MISSOURI in connection with this Appendix (including but not limited to information submitted in connection with CLEC's applications for the assignment of pole attachment and occupancy space and for pole attachment and conduit occupancy licenses) shall be deemed to be "Confidential" or "Proprietary" information of CLEC and shall be subject to the terms set forth in this article. Confidential or Proprietary information specifically includes information or knowledge related to CLEC's review of records regarding a particular market area, or relating to assignment of space to CLEC in a particular market area, and further includes knowledge or information about the timing of CLEC's request for or review of records or its inquiry about SBC MISSOURI facilities. This article does not limit the use by SBC MISSOURI of aggregate information relating to the occupancy and use of SBC MISSOURI's poles, ducts, conduits, and rights-of-way by firms other than SBC MISSOURI (that is, information submitted by CLEC and aggregated by SBC MISSOURI in a manner that does not directly or indirectly identify CLEC).
- 23.02 Access Limited to Persons with a Need to Know. Confidential or Proprietary information provided by CLEC to SBC MISSOURI in connection with this Appendix shall not be disclosed to, shared with, or accessed by any person or persons (including but not limited to personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities) other than those who have a need to know such information for the limited purposes set forth in Sections 28.03 to 28.06.
- 23.03 Permitted Uses of CLEC's Confidential or Proprietary Information. SBC MISSOURI and persons acting on SBC MISSOURI's behalf, except for personnel involved in sales, marketing, competitive intelligence, competitive analysis, strategic planning, and similar activities, may utilize CLEC's Confidential or Proprietary information for the following purposes (a) posting information, as necessary, to SBC MISSOURI's outside plant records; (b) placing, constructing, installing, operating, utilizing, maintaining, monitoring, inspecting, repairing, relocating, transferring, conveying, removing, or managing SBC MISSOURI's poles, ducts, conduits, and rights-of-way and any SBC MISSOURI facilities located on, within, or in the vicinity of such poles, ducts, conduits, and rights-of-way; (c) performing SBC MISSOURI's obligations under this Appendix and similar agreements with third parties; (d) performing SBC MISSOURI's general obligations to afford nondiscriminatory access to telecommunications carriers and cable television systems under the Pole Attachment Act; (e) determining which of SBC MISSOURI's poles, ducts, conduits, and rights-of-way are (or may in the future be) available for SBC MISSOURI's own use, and making planning, engineering, construction, and budgeting decisions relating to SBC MISSOURI's poles, ducts, conduits, and rights-of-way; (f) preparing cost studies; (g) responding to regulatory requests for information; (h) maintaining SBC MISSOURI's financial accounting records; and (i) complying with other legal requirements relating to poles, ducts, conduits, and rights-of-way.

- 23.04 Access by Third Parties. Information reflecting the assignment of pole attachment and conduit occupancy space to CLEC may be made available to personnel of third parties seeking access to SBC MISSOURI's records under provisions, and subject to protections, equivalent to those contained in and required by Section 7.03 of this Appendix.
- 23.05 Defense of Claims. In the event of a dispute between SBC MISSOURI and any person or entity, including CLEC, concerning SBC MISSOURI's performance of this Appendix, 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 MISSOURI may utilize Confidential or Proprietary information submitted by CLEC 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 MISSOURI shall not disclose CLEC's Proprietary or Confidential Information without first, at SBC MISSOURI's option, (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of the information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing CLEC notice of the subpoena or order and the opportunity to protect the Proprietary or Confidential Information.
- 23.06 Response to Subpoenas, Court Orders, and Agency Orders. Nothing contained in this article shall be construed as precluding SBC MISSOURI 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 MISSOURI shall not disclose CLEC's proprietary or confidential information without first, at SBC MISSOURI's option: (a) obtaining an agreed protective order or nondisclosure agreement that preserves the confidential and proprietary nature of CLEC's information; (b) seeking such a protective order as provided by law if no agreed protective order or nondisclosure agreement can be obtained; or (c) providing CLEC notice of the subpoena, demand, or order and an opportunity to take affirmative steps of its own to protect such proprietary or confidential information.
- 23.07 Other Uses of Confidential Information. No other uses of Confidential or Proprietary information received from CLEC pursuant to this Appendix are authorized or permitted without CLEC's express written consent.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

SOUTHWESTERN BELL TELEPHONE L.P. d/b/a
SBC MISSOURI
BY SBC OPERATIONS, INC., ITS AUTHORIZED AGENT

By: _____
Signature of SBC MISSOURI's Authorized Officer/Employee:

Name of SBC MISSOURI's Authorized Officer/Employee (Printed or Typed)

Position/Title of SBC MISSOURI's Authorized Officer/Employee

Date

CLEC

By: _____

Signature of CLEC's Authorized Officer/Employee

Name of CLEC's Authorized Officer/Employee (Printed or
Typed)

Title of CLEC's Authorized Officer/Employee

Date