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August 27, 1999

Mr. Dale Hardy Roberts
Executive Secretary-Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102-0360

FILED²

AUG 30 1999

Missouri Public
Service Commission

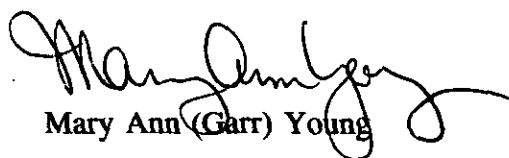
RE: Case No. TO-2000-54
DSLnet Communications, LLC's, Application for Approval of Interconnection
Agreement with Southwestern Bell Telephone Company

Dear Mr. Roberts:

Enclosed please find an original and fourteen copies of a **Motion to Amend Exhibit** for filing with the Commission in the above-referenced case.

Thank you for your assistance in processing this filing. Copies of the Motion are being served on the Office of Public Counsel and counsel for SWBT. If there are any questions, please call me at 634-8109.

Sincerely yours,


Mary Ann (Garr) Young

Enclosures

cc: Office of Public Counsel
Southwestern Bell Telephone Company
Mr. Paul Hudson, Swidler Berlin

FILED

AUG 30 1999

BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Application of)
)
DSLNET COMMUNICATIONS, LLC)
)
for Approval of an Interconnection)
Agreement Under the)
Telecommunications Act of 1996)
in the State of Missouri)
and for Competitive Classification)

Case No. TO-2000-54

MOTION TO AMEND EXHIBIT

Comes now DSLnet Communications, LLC ("DSLnet" or "Applicant"), and for its Motion to Amend Exhibit states as follows:

1. On July 26, 1999, DSLnet filed its Application for Approval of Interconnection Agreement, which the Commission has docketed as Case No. TO-2000-54. Attached to that Application and referenced as Exhibit A was the Interconnection Agreement between Southwestern Bell Telephone Company and DSLnet.

2. An amendment to that Interconnection Agreement has now been executed by SWBT and DSLnet, dated August 6, 1999.

3. The purpose of the Amendment is to incorporate the effects of recent events on the relationship between the parties. The new Appendix Collocation reflects the new collocation regulations of the Federal Communications Commission adopted in *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), which became effective on June 1, 1999. Section 3.0 of the General Terms and Conditions of the agreement (see Page 8) was modified to clarify that the parties have not waived their rights with respect to two recent

Supreme Court decisions, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S.Ct. 721 (January 25, 1999) and *Ameritech v. FCC*, ___ U.S. ___, 119 S.Ct. 2016 (June 1, 1999). The Amendment consists of: (a) a 4-page document entitled "AMENDMENT NO. 1 TO INTERCONNECTION AGREEMENT by and between SOUTHWESTERN BELL TELEPHONE COMPANY AND DSLNET COMMUNICATIONS, LLC (page 634-637), (b) a revised copy of the General Terms and Conditions (page 1-36 and 38) and (c) a new Appendix Collocation dated 7/7/99 (pages 420-443.6).

4. As the terms of Exhibit A as filed herein on July 26, 1999, no longer reflect the current agreement between SWBT and DSLnet, DSLnet respectfully requests that the Missouri Public Service Commission ("Commission") accept the enclosure as an amendment to Exhibit A, and approve the Interconnection Agreement, as amended.

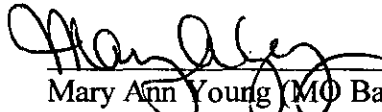
5. The Interconnection Agreement originally filed as Exhibit A included seriatim (hand written) page-numbering in the bottom right corner of each page. The enclosed Amendment pages have been numbered (hand written) with numbers corresponding to the same page numbers in the original Interconnection Agreement, with some exceptions as described below. This method will permit substitution of the Amendment pages into the original Interconnection Agreement for purposes of review by the Staff and Commission, and for inclusion as a single document in the Commission's files once approved. The revised General Terms and Conditions are numbered page 1 through page 36 and page 38, leaving the original signature page, (page 37) as filed. As stated above, the only substantive change in the General Terms and Conditions is in the terms of Section 3 on page 8. In addition, page 5, (also labeled at top right as page iii of iii) and page 36 (labeled at top right as page 31 of 33) reflect the amendment date for the Appendix Collocation. The exceptions to the identical (substitutable) page-numbering are as follows: the new Appendix Collocation contains more pages

than the original Appendix Collocation, which ended with page 443; therefore, the additional pages have been numbered 443.1 through 443.6. The Amendment document has been page-numbered to be added to the end of the Interconnection Agreement, beginning with page number 634. DSLnet has discussed this approach to page-numbering the Amendment documents with Staff and SWBT and obtained their concurrence. However, if the Commission prefers some other approach, Applicant will be pleased to comply with other instructions.

6. Finally, DSLnet notes that the Commission has not issued Notice of the filing of the Interconnection Agreement nor set a deadline for Staff's response. DSLnet respectfully requests this Notice be issued as soon as possible, referencing the amended Interconnection Agreement.

WHEREFORE, DSLnet respectfully requests that the Commission accept the enclosed Amendment to the Interconnection Agreement previously filed with the Commission, issue Notice of the Agreement, and approve the amended Interconnection Agreement as soon as practicable.

Respectfully submitted,



Mary Ann Young (MO Bar #27951)

William D. Steinmeier, P.C.

P.O. Box 104595

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Jefferson City, MO 65110-4595

Telephone: (573) 634-8109

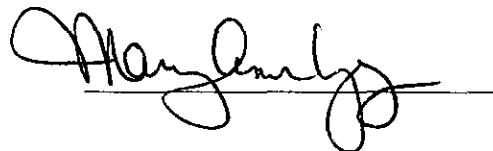
Facsimile: (573) 634-8224

Counsel for DSLnet Communications, LLC

Dated: August 27, 1999

Certificate of Service

I hereby certify that a copy of this document has been hand delivered or mailed by first class mail, postage prepaid, to the Office of Public Counsel, the General Counsel's Office, and Southwestern Bell Telephone Company on this 27th day of August 1999.



AMENDMENT NO. 1 TO INTERCONNECTION AGREEMENT
by and between
SOUTHWESTERN BELL TELEPHONE COMPANY
AND
DSLNET COMMUNICATIONS, LLC

The Interconnection Agreement ("the Agreement") by and between Southwestern Bell Telephone Company ("SWBT") and DSLnet Communications, LLC ("CLEC") is hereby amended as follows:

- (1) General Terms and Conditions pages iii and 31 are amended to indicate Appendix Collocation was amended August, 1999.
- (2) General Terms and Conditions Section 3.1 and 3.2 are deleted and replaced with a new Section 3.1.

~~3.1 This Agreement is entered into as a result of both private negotiation between the Parties and arbitration by the State Commission, acting pursuant to FTA96. If the actions of Missouri or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of the contract required by the Arbitration Award approved by the State Commission, the affected provision will be invalidated, modified, or stayed as required by the legislative body, court, or regulatory agency. In such event, the Parties will expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions will be submitted to the Missouri Public Service Commission for resolution, pursuant to FTA96, Sec. 252(b), (c) and (d), provided that either party may request expedited resolution by the Missouri Public Service Commission, with both parties retaining all rights of appeal.~~

~~3.2 In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party will promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties will expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement within sixty (60) days after such notice, either Party may~~

~~invoke the Dispute Resolution process set forth in Section 9.4.2 of this Agreement.~~

3.1 This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Missouri Public Service Commission. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its rights under this Intervening Law paragraph.

- (3) Delete Appendix Collocation and replace with Appendix Collocation revision date 07/07/99 which is attached in its entirety.

- (4) This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with such Agreement.

(5) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT, and such terms are hereby incorporated by reference and the Parties hereby reaffirm the terms and provisions thereof.

(6) This Amendment shall be filed with and is subject to approval by the Missouri Public Service Commission ("PUC") and shall become effective ten (10) days following approval by such PUC.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 6 day of August, 1999, by SWBT, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

DSLnet Communications, LLC

***Southwestern Bell Telephone
Company**

AECN/OCN: 4665

By: Wendy Bluemling

By: Larry B. Cooper

Title: Director - Regulatory

Title: President - Industry Markets

Name: Wendy Bluemling

(Print or Type)

Name: Larry B. Cooper

(Print or Type)

*On January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999). By executing this amendment, SWBT does not waive any of its rights, remedies or arguments with respect to such decisions and any remands thereof, including its rights under Section 3.0 of the Interconnection Agreement between DSLnet Communications, LLC and Southwestern Bell.

INTERCONNECTION AGREEMENT-MISSOURI

between

Southwestern Bell Telephone Company

and

DSLnet Communications, LLC

INTERCONNECTION AGREEMENT-MISSOURI

between

Southwestern Bell Telephone Company

and

DSLnet Communications, LLC

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SOUTHWESTERN BELL TELEPHONE COMPANY
AND
DSLNET COMMUNICATIONS, LLC

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ATTACHMENTS

Resale

Attachment 1: Resale

Appendix Services/Pricing

Exhibit A: SWBT's Telecommunications Services Available for Resale

Exhibit B: SWBT's Other Services Available for Resale

Appendix Customized Routing-Resale

Appendix DA-Resale

Appendix OS-Resale

Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

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Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

- Attachment 6: Unbundled Network Elements (UNE)
 - Appendix Pricing-UNE
 - Appendix Pricing-UNE Schedule of Prices
- Attachment 7: Ordering and Provisioning-UNE
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- Attachment 9: Billing-Other
- Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

- Attachment 11: Network Interconnection Architecture
 - Appendix Interconnection Trunking Requirement (ITR)
 - Appendix Network Interconnection Methods (NIM)
 - Appendix SS7 Interconnection
- Attachment 12: Compensation
 - Appendix Cellular
 - Appendix FGA

Ancillary Functions

- Attachment 13: Ancillary Functions
 - Appendix Collocation
 - Appendix Poles, Conduit, ROW

Amended 8/99

Other Requirements

- Attachment 14: Interim Number Portability
- Attachment 15: E911
- Attachment 16: Network Security and Law Enforcement
- Attachment 17: Failure to Meet Performance Criteria
- Attachment 18: Mutual Exchange of Directory Listing Information
- Attachment 19: White Pages-Other (WP-O)
- Attachment 20: Clearinghouse
- Attachment 21: Numbering
- Attachment 22: DA-Facilities Based
- Attachment 23: OS-Facilities Based
- Attachment 24: Recording-Facilities Based

INTERCONNECTION AGREEMENT - MISSOURI

This Interconnection Agreement - Missouri (Agreement) is between DSLnet Communications, LLC ("CLEC") a Delaware corporation, having an office at 545 Long Wharf Drive, 5th Floor, New Haven, Connecticut 06511 and Southwestern Bell Telephone Company (SWBT), a Missouri corporation, having an office at 1010 Pine Street, St. Louis, Missouri 63101, (collectively the Parties).

WHEREAS, pursuant to Section 252(i) of the Federal Communications Act of 1996, CLEC and SWBT have entered into an agreement on the same terms and conditions contained in the SWBT/NorthPoint Communications, Inc. Agreement for the State of Missouri ("the underlying agreement").

WHEREAS, By executing this MFN Agreement providing certain rates, terms and conditions, SWBT reserves all appellate rights with respect to such rates, terms and conditions and does not waive any legal arguments by executing this Agreement. It is SWBT's intent and understanding of state and federal law, that any negotiations, appeal, stay, injunction or similar proceeding which impacts the applicability of such rates, terms or conditions to the underlying Agreement will similarly and simultaneously impact the applicability of such rates, terms and conditions to CLEC. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis for a provision of the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), (e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), ("such Actions"), the Parties shall immediately incorporate changes from the underlying Agreement, made as a result of such Actions into this Agreement. Where revised language is not immediately available, the Parties shall expend diligent efforts to incorporate the results of such Actions into this Agreement on an interim basis, but shall conform this Agreement to the underlying Agreement, once such changes are filed with the Commission.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SWBT services and for the provision by SWBT of Interconnection, unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement CLEC and SWBT hereby agree as follows:

1.0 INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SWBT agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) unbundled Network Elements, or combinations of such Network Elements (Combinations), (c) Ancillary Functions and (d) Interconnection to CLEC. This Agreement also sets forth the terms and conditions for the interconnection of CLEC's network to SWBT's network and reciprocal compensation for the transport and termination of telecommunications.
- 1.2 The Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Network Elements, Combinations or Resale services provided by SWBT or to any network components provided by CLEC itself or by any other vendor. Subject to the requirements of this Agreement, CLEC may at any time add, delete, relocate or modify the Resale services, Network Elements or Combinations purchased hereunder.
- 1.3 During the term of this Agreement, SWBT will not discontinue, as to CLEC, any Network Element, Combination, or Ancillary Functions offered to CLEC hereunder. During the term of this Agreement, SWBT will not discontinue any Resale services or features offered to CLEC hereunder except as provided in Attachment 1: Resale hereto and subject to the provisions of Section 30.2 of the General Terms and Conditions of this Agreement. This Section is not intended to impair SWBT's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Network Elements, Combinations, or Ancillary Functions made by SWBT to CLEC as set forth in an during the terms of this Agreement.
- 1.4 SWBT may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed in Section 62 of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas.

2.0 Effective Date

- 2.1 This Agreement becomes effective (1) when executed by each Party and approved by the State Commission; or (2) by operation of law pursuant to the Order of the State Commission, whichever is earlier.

3.0 Intervening Law

- 3.1 This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Missouri Public Service Commission. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) and on June 1, 1999, the United States Supreme Court issued its opinion in *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999). The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its rights under this Intervening Law paragraph.

4.0 Term of Agreement

- 4.1 This Agreement will become effective as of the Effective Date stated above, and will expire November 7, 2000, plus two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.

- 4.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the State Commission for arbitration. Should the State Commission decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 4.3 Upon termination of this Agreement, CLEC's liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by CLEC to prevent service interruption, but not to exceed one (1) year. The Network Elements, Combinations, Ancillary Functions and Resale services provided hereunder are vital to CLEC and must be continued without interruption. When CLEC provides or retains another vendor to provide such comparable Network Elements, Combinations, Ancillary Functions or Resale services, SWBT and CLEC agree to co-operate in an orderly and efficient transition to CLEC or another vendor. SWBT and CLEC further agree to coordinate the orderly transition to CLEC or another vendor such that the level and quality of the Network Elements, Combinations, Ancillary Functions and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

5.0 Assignment

- 5.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SWBT may assign its rights and delegate its benefits and delegate its duties and obligations under this Agreement without the consent of CLEC to a 100 per cent owned affiliate of SWBT, provided the performance of any such assignee is guaranteed by the assignor. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.
- 5.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

6.0 Confidentiality and Proprietary Information.

- 6.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All information which is disclosed by one party to the other in connection with this Agreement, during negotiations (also see the Confidentiality Agreement between the Parties dated April 5, 1999) and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Resale Services, Network Elements or Combinations placed by CLEC

pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of CLEC's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and Recorded Usage Data as described in Attachments 5 and 10 concerning Recorded Usage Data, whether disclosed by CLEC to SWBT or otherwise acquired by SWBT in the course of the performance of this Agreement, will be deemed Confidential Information of CLEC for all purposes under this Agreement.

- 6.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.
- 6.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 6.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 6.5 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the

Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.

- 6.6 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- 6.7 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 6.8 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 6.9 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

7.0 Liability and Indemnification

7.1 Limitation of Liabilities

- 7.1.1 Each party's liability to the other resulting from any and all causes, other than as specified below in Sections 7.3.1 and 7.3.3, and other than for willful misconduct (including gross negligence), will not exceed the total of any amounts due and owing to CLEC pursuant to Section 45 (Performance Criteria) and the Attachment referenced in that Section, plus the amounts charged to CLEC by SWBT under this Agreement for the affected service, business practice or ancillary functions (as defined under Section 3.1 of Attachment 13) and the value of the injured party's collocated equipment or collocated property that was destroyed or damaged by the injuring party during the period beginning at the time of the error, interruption, defect, failure, malfunction loss or claim is received by the uninjured party to the time of correction of same.
- 7.1.2 In the case of any loss alleged or suffered by a third party, each Party shall bear, and its obligation to the other Party shall be limited to that portion of the loss caused by its own conduct (including intentional misconduct or gross negligence) or that of its agents, servants, contractors, or others acting in aid or concert with it.

7.2 No Consequential Damages

- 7.2.1 NEITHER CLEC NOR SWBT WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTIES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SWBT'S OR CLEC'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT, (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SWBT OR CLEC'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

7.3 Obligation to Indemnify

- 7.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnatee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any omissions, breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions, omissions or status of its employees, agents, and subcontractors.
- 7.3.2 If required, CLEC is responsible for obtaining any license or right to use agreement associated with a Network Element purchased from SWBT. SWBT will provide a list of all known and necessary licenses or right to use agreements applicable to the subject Network Element(s) within seven days of a request for such a list by CLEC. SWBT agrees to use its best efforts to facilitate the obtaining of any necessary license or right to

use agreement. In the event such an agreement is not forthcoming for a Network Element ordered by CLEC, the Parties commit to negotiate in good faith for the provision of alternative Elements or services which shall be equivalent to or superior to the Element for which CLEC is unable to obtain such license or agreement.

- 7.3.3 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party for actual infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right now known or later developed to the extent that such claim or action arises from the actions of the respective Parties, or failure to act, as required pursuant to this Agreement.
- 7.3.4 SWBT makes no warranties, express or implied, concerning CLEC's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with CLEC's rights to interconnect with SWBT's network and to Unbundled Network Elements and/or combine SWBT's network elements (including combining with CLEC's Network Elements) such interconnection or unbundling and/or combining of Elements (including combining with components of CLEC's network) in SWBT's network. Section 7 applies solely to this Agreement. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to CLEC's intellectual property or contract rights.

7.4 Obligation to Defend; Notice; Cooperation

- 7.4.1 Whenever a Claim will arise for indemnification under this Section, the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice will have been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights

or other rights of any Indemnatee, and the relevant Indemnatee will have the right to refuse such compromise or settlement and, at the refusing Party's or refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnatee against any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnatee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnatee and also will be entitled to employ separate counsel for such defense at such Indemnatee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnatee will have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

7.5 OSHA Statement

- 7.5.1 CLEC, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to CLEC's activities concerning Collocated Space, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result solely of CLEC's failure to comply with any of the foregoing. SWBT, in its status as an employer, will comply with all federal, state and local laws, safety and health standards and regulations with respect to all other portions of the Premises, and agrees to indemnify and hold CLEC harmless for any judgments, citations, fines or other penalties which are assessed against CLEC as a result solely of SWBT's failure to comply with any of the foregoing.

8.0 Payment of Rates and Charges

- 8.1 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Agreement within thirty (30) days of receipt of an invoice. Except as otherwise specifically provided in this Agreement interest on overdue invoices will apply at the six (6) month Commercial Paper Rate applicable on the first business day of each calendar year.

9.0 Dispute Resolution

9.1 Finality of Disputes

- 9.1.1 Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

9.2 Alternative to Litigation

- 9.2.1 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

9.3 Informal Resolution of Disputes

- 9.3.1 In the case of any dispute and at the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. Unless otherwise provided herein, or upon the Parties' agreement, either Party may invoke formal dispute resolution procedures including arbitration or other procedures as appropriate, not earlier than sixty (60) days after the date of the letter initiating dispute resolution under this paragraph.

9.4 Billing Disputes

- 9.4.1 The Parties agree that all unresolved billing disputes which involve amounts which represent one (1) percent or less of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the dispute arises will be submitted to binding arbitration pursuant to the provisions of Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.
- 9.4.2 The Parties agree that if they are unable to resolve billing disputes which involve amounts which represent more than one (1) percent of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the dispute arises, then either party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration pursuant to Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.

- 9.4.3 The Parties agree that all bills, including bills disputed in whole or in part, are to be paid when due, that interest applies to all overdue invoices as set forth in Section 8.1 to this Agreement, and that no other late payment fee or charge applies to overdue invoices. The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive, by crediting or otherwise, interest applied to the disputed amount as set forth in Section 8.1.
- 9.4.4 To the extent that any other portions of this Agreement provide for a bill closure process between the parties, or if such a process is mutually agreed to by the Parties, the procedures involved in such processes will not be deemed to place a particular billing item in dispute for purposes of this Section.
- 9.4.5 Each Party agrees to notify the other Party of a billing dispute and may invoke the informal dispute resolution process described in Section 9.3. The parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, or, if the charges have been subject to the bill closure process described in Section 9.4.4, above, within sixty (60) calendar days of the closure of the billing period covered by such bill closure process.

9.5 **Other Disputes**

- 9.5.1 **Dispute Resolution Procedure (DRP) 1** - Except as otherwise specifically set forth in the Agreement, the Parties agree that for all other disputes which arise under this Agreement, the dispute will be submitted to binding arbitration under Section 9.6 of this Agreement if the matter which is in dispute represents one (1) percent or less of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the matter which is disputed arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute. During the first Contract Year the Parties will annualize the initial months up to one year.
- 9.5.2 **Dispute Resolution Procedure (DRP) 2** - Except as otherwise specifically set forth in the Agreement, for all other disputes involving matters which represent more than one (1) percent of the amounts charged to CLEC by SWBT under this Agreement during the Contract Year in which the dispute arises, whether measured by the disputing Party in terms of actual amounts owed or owing, or as amounts representing its business or other risks or obligations relating to the matter in dispute then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided that upon mutual agreement of the Parties, the dispute may be submitted to binding arbitration under Section 9.6. During the first Contract Year the Parties will annualize the initial months up to one year.
- 9.5.3 **Dispute Resolution Procedure (DRP) 3** - Except as otherwise specifically set forth in this agreement, for all disputes involving additions to this Agreement under the

Telecommunications Act of 1996, the Parties agree that such disputes will be submitted to the Missouri Public Service Commission for resolution pursuant to FTA96, provided that either Party may request expedited resolution by the Missouri Public Service Commission, with both Parties retaining all rights to appeal.

- 9.5.4 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

9.6 **Arbitration**

- 9.6.1 Disputes subject to binding arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each arbitration will be held will be Dallas, Texas, unless the parties otherwise agree. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

10.0 **Termination of Service to CLEC**

- 10.1 Failure of CLEC to pay charges may be grounds for termination of this Agreement. If CLEC fails to pay when due, any and all charges billed to them under this Agreement, (Unpaid Charges), and any portion of such charges remain unpaid more than fifteen (15) calendar days after the due date of such Unpaid Charges, SWBT will notify CLEC in writing that in order to avoid having service disconnected, CLEC must remit all Unpaid Charges, whether disputed or undisputed, to SWBT within fifteen (15) calendar days after receipt of said notice. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 9 of this Agreement.
- 10.2 If any CLEC charges remain unpaid at the conclusion of the time period as set forth in Section 10.1 above (30 calendar days from the due date of such unpaid charges), SWBT will notify CLEC, the appropriate commission(s) and the end user's IXC(s) of Record in writing, that unless all charges are paid within fifteen (15) calendar days, CLEC's service will be disconnected and CLEC's end users may be switched to SWBT local service. SWBT will also suspend order acceptance at this time.

- 10.3 If any CLEC charges remain unpaid or undisputed thirty (30) calendar days past the due date of the unpaid charges as described in Section 10.2 above, CLEC will, at its sole expense, notify its end users, the Commission and the end user's of Record that their service may be disconnected for CLEC failure to pay unpaid charges, and that its end users must select a new local service provider within fifteen (15) calendar days. The notice will also advise the end user that SWBT will assume the end user's account at the end of the fifteen (15) calendar day period should the end user fail to select a new local service provider.
- 10.4 If any CLEC charges remain unpaid or undisputed forty-five (45) calendar days past the due date, SWBT will disconnect CLEC and transfer all CLEC's end users who have not selected another local service provider directly to SWBT's service. These end users will receive the same services provided through CLEC at the time of service. These end users will receive the same services provided through CLEC at the time of transfer. SWBT will inform the Commission and the end user's IXC(s) of Record of the names of all end users transferred through this process. Applicable service establishment charges for switching end users from CLEC to SWBT will be assessed to CLEC.
- 10.5 Within five (5) calendar days of the transfer (50 calendar days past CLEC's due date), SWBT will notify all affected end users that because of CLEC's failure to pay, their service is now being provided by SWBT. SWBT will also notify the end user that they have thirty (30) calendar days to select a local service provider. If the end user does not select an LSP within 30 calendar days the customer will remain a SWBT local customer.
- 10.6 SWBT may discontinue service to CLEC upon failure to pay undisputed charges as provided in this section, and will have no liability to CLEC in the event of such disconnection.
- 10.7 After disconnect procedures have begun, SWBT will not accept service orders from CLEC until all unpaid charges are paid. SWBT will have the right to require a deposit equal to one month's charges (based on the highest previous month of service from SWBT) prior to resuming service to CLEC after disconnect for nonpayment.
- 10.8 Beyond the specifically set out limitations in this section, nothing herein will be interpreted to obligate SWBT to continue to provide service to any such end users or to limit any and all disconnection rights SWBT may have with regard to such end users.
- 11.0 Notices**
- 11.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next

business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

- 11.2 If to CLEC: Wendy Bluemling, Director
DSLnet Communications, LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511
- 11.3 If to SWBT: Account Manager
Four Bell Plaza, 7th Floor
311 S. Akard Street
Dallas, TX 75202-5398

Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving seven (7) days' prior written notice to the other Party in compliance with this Section. Any notice or other communication will be deemed given when received.

12.0 Taxes

- 12.1 With respect to any purchase of service under this Agreement, if any Federal, state or local government tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by applicable law, ordinance or tariff to be collected from a purchasing Party by the providing Party, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- 12.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity.
- 12.3 If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

- 12.4 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 12.2, will not collect such Tax during the effective period of the exemption. Such exemption will be effective upon receipt of the exemption certificate or affidavit in accordance with Section 12.7.
- 12.5 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless on an after-tax basis with respect to forbearing to collect such Tax.
- 12.6 With respect to any Tax or Tax controversy covered by this Section 12, the purchasing Party will be entitled to contest, pursuant to applicable law, and at its own expense, any Tax that it is ultimately obligated to pay. The purchasing Party will be entitled to the benefit of any refund or recovery resulting from such a contest. The providing Party will cooperate in any such contest.
- 12.7 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 12, will be made in writing and will be delivered by certified mail, and sent to the addresses stated in Section 11 and to the following:

To SWBT: Director - Taxes - SBO
1010 N. St. Mary's, Room 11X01
San Antonio, TX 78215

To CLEC: Wendy Bluemling, Director
DSLnet Communications, LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511

Either Party may from time-to-time designate another address or addressee by giving notice in accordance with the terms of this Section 12.7.

Any notice or other communication will be deemed to be given when received.

13.0 Force Majeure

Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, and upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

14.0 Publicity

- 14.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.
- 14.2 Neither Party will offer any services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's written authorization.

15.0 Network Maintenance and Management

- 15.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.
- 15.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they will work cooperatively to ensure that all such events will attempt to be conducted in such a manner as to avoid disruption or loss of service to other end users. Each party will maintain the capability of respectively implementing basic protective controls such as "Cancel To" or "Call Gap."

- 15.3 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

16.0 Law Enforcement and Civil Process

16.1 Intercept Devices

- 16.1.1 Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a customer of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.

16.2 Subpoenas

- 16.2.1 If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving party is able to do so; if response requires the assistance of the other party such assistance will be provided.

16.3 Law Enforcement Emergencies

- 16.3.1 If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

17.0 Changes in Subscriber Carrier Selection

- 17.1 With respect to Resale services and unbundled Network Elements provided to end users, each Party must obtain end user authorization prior to requesting a change in the end users' provider of local exchange service (including ordering end user specific Network Elements) and must retain such authorizations for twelve (12) months. The authorization

must conform with federal rules regarding changes of presubscribed interexchange carriers until such time as there are federal or state rules applicable to changes of local exchange service providers. Thereafter, the authorization must comply with each such rule. The party submitting the change request assumes responsibility for applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996.

- 17.2 Only an end user can initiate a challenge to a change in its local exchange service provider. In connection with such challenges each party will follow procedures which conform with federal rules regarding challenges to changes of presubscribed interexchange carriers, if any, until such time as there are federal or state rules applicable to challenges to changes of local exchange service providers. Thereafter, the procedures each Party will follow concerning challenges to changes of local exchange service providers will comply with such rule. If an end user notified SWBT or CLEC that the end user requests local exchange service, the Party receiving such request shall be free to immediately provide service to such end user. The party receiving such request shall be free to connect the end user to any local service provider based upon the local service provider's request and assurance that proper end user authorization has been obtained. Either Party shall make authorizations available to the other Party upon request and at no charge only when such request is made in order to investigate claims of unauthorized changes initiated by an end user.
- 17.3 When an end user changes or withdraws authorization, each Party will release customer specific facilities in accordance with the end user customer's directions, or the directions of the end user's agent. Further, when an end user abandons the premise, SWBT is free to reclaim the facilities for use by another customer and is free to issue service orders required to reclaim such facilities.
- 17.4 Neither Party shall be obligated by this Agreement to investigate any allegations of unauthorized changes in local exchange services ("slamming") on behalf of the other Party or a third Party. If either Party, on behalf of the other Party, agrees to investigate an alleged incidence of slamming, the requesting party will provide the billed telephone number and information adequate to allow the other Party to investigate the incidence, and that Party shall charge the other Party a mutually agreed investigation fee.

18.0 Amendments or Waivers

- 18.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition. By entering into this Agreement, the Parties do not waive any right granted to them pursuant to the Act; however, the Parties enter into this Agreement without prejudice to any positions they have taken

previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

19.0 Authority

- 19.1 Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

20.0 Binding Effect

- 20.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

21.0 Consent

- 21.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld or delayed.

22.0 Expenses

- 22.1 Except as specifically set out in this Agreement, each party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

23.0 Headings

- 23.1 The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

24.0 Relationship of Parties

- 24.1 This Agreement will not establish, be interpreted as establishing, or be used by either party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party will have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement will be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

25.0 Conflict of Interest

- 25.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, paid a fee, or otherwise received or will receive any personal

compensation or consideration from the other Party, or any of the other Party's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

26.0 Multiple Counterparts

- 26.1 This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one, and the same document.

27.0 Third Party Beneficiaries

- 27.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and will not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

28.0 Regulatory Approval

- 28.1 Each Party agrees to cooperate with the other and with any regulatory agency to obtain regulatory approval. During the term of this Agreement, each Party agrees to continue to cooperate with each other and any regulatory agency so that the benefits of this Agreement may be achieved.

29.0 Trademarks and Trade Names

- 29.1 Except as specifically set out in this Agreement, nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent written consent of the other Party.

30.0 Regulatory Authority

- 30.1 SWBT will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. CLEC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to CLEC Customers contemplated by this Agreement. CLEC will reasonably cooperate with SWBT in obtaining and maintaining any required approvals for which SWBT is responsible, and SWBT will reasonably cooperate with CLEC in obtaining and maintaining any required approvals for which CLEC is responsible.
- 30.2 SWBT will not, of its own volition, file a tariff or make another similar filing which supersedes this Agreement in whole or in part. SWBT will make no filings which are

inconsistent with this commitment. This Section is not intended to apply to any SWBT tariffs or filings which do not affect CLEC's rights or SWBT's obligations to CLEC under this Agreement. This Section does not impair SWBT's right to file tariffs nor does it impair SWBT's right to file tariffs proposing new products and services and changes in the prices, terms and conditions of existing products and services, including discontinuance or grandfathering of existing features or services, of any telecommunications services that SWBT provides or hereafter provides to CLEC under this Agreement pursuant to the provision of Attachment 1: Resale, nor does it impair CLEC's right to contest such tariffs before the appropriate Commission.

- 30.3 In the event that SWBT is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, SWBT will provide CLEC notice of the same.
- 30.4 If any tariff referred to in Section 30.3 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.

31.0 Verification Reviews

- 31.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of the other Party's billing and invoicing. The Parties may employ other persons or firms for this purpose. Such audit will take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof.
- 31.2 Each Party will promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by the other Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any disputes concerning audit results will be resolved pursuant to the Dispute Resolution procedures described in Section 9 of this Agreement.
- 31.3 Each Party will cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the accuracy of the Party's bills.
- 31.4 Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least two percent (2%) of the amounts payable by CLEC for Resale services, Network Elements or Combinations provided during the period covered by the audit.

- 31.5 Audits will be at the auditing Party's expense.
- 31.6 Upon (i) the discovery by either Party of overcharges not previously reimbursed to the other Party or (ii) the resolution of disputed audits, the affected Party will promptly reimburse the other Party the amount of any overpayment times the commercial paper rate applicable on the last day of the month preceding the month of discovery or resolution as above. In no event, however, will interest be assessed on any previously assessed or accrued late payment charges.
- 31.7 CLEC may require that, at the end of the first year of implementation of this Agreement, SWBT submit to an audit or examination of services performed under the interconnection agreement. Subsequent to the first year of implementation, CLEC may require that audits or examinations be performed if: (1) CLEC can show cause that it has a commercially reasonable basis to seek an audit or examination; and (2) the request for audit or examination specifically defines the particular services that it seeks to audit or examine. All audits requested by CLEC under this section shall be conducted at its expense. The dispute resolution provisions of this Agreement shall be used to resolve disputes arising concerning requests for audits or examinations, or the results of the audits or examinations.
- 31.8 From the Effective Date of this Agreement through April 1, 1998, SWBT may audit CLEC's operations, books, records, and other documents related to the development of the percent local usage (PLU) to be used to measure and settle untransmitted calling party numbers (CPN) in connection with Attachment 12: Compensation. SWBT will bear the reasonable expenses associated with this inspection.
- 31.9 Information obtained or received by CLEC in conducting the inspections described in Section 31.7 and information obtained or received by either Party in connection with Sections 31.1 through 31.6 and 31.8 will be subject to the confidentiality provisions of Section 6 of this Agreement.
- 32.0 Complete Terms**
- 32.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.
- 32.2 Neither Party will be bound by an amendment, modification or additional term unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.

33.0 Cooperation on Preventing End User Fraud

- 33.1 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.
- 33.2 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation referenced in the above paragraph will include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the end user's permission to obtain such information.

34.0 Notice of Network Changes

- 34.1 SWBT agrees to provide CLEC reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of services using SWBT's facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks. This Agreement is not intended to limit SWBT's ability to upgrade its network through the incorporation of new equipment, new software or otherwise so long as such upgrades are not inconsistent with SWBT's obligations to CLEC under the terms of this Agreement.

35.0 Good Faith Performance

- 35.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

36.0 Responsibility of Each Party

- 36.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its

contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

37.0 Transmission of Traffic to Third Parties

- 37.1 CLEC will not send to SWBT local traffic that is destined for the network of a third party unless CLEC has the authority to exchange traffic with that third party.

38.0 Governmental Compliance

- 38.1 CLEC and SWBT each will comply at its own expense with all applicable law related to i) its obligations under or activities in connection with this Agreement; of ii) its activities undertaken at, in connection with or relating to Work Locations. CLEC and SWBT each agree to indemnify, defend, (at the other party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from i) its failure or the failure of its contractors or agents to so comply or ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. SWBT, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for SWBT to provide the Network Elements and Resale services pursuant to this Agreement.

39.0 Responsibility for Environmental Contamination

- 39.1 CLEC will in no event be liable to SWBT for any costs whatsoever resulting from the presence or Release of any Environmental Hazard which CLEC did not introduce to, or knowingly use, the affected Work Location. SWBT will indemnify, defend (at CLEC's request) and hold harmless CLEC, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard that SWBT, its contractors or agents introduce to the Work locations or (ii) the presence or Release of any Environmental Hazard for which SWBT is responsible under applicable law. SWBT's obligation to indemnify will be commensurate with the degree to which SWBT or its agents caused or contributed to the loss, damages, claims, demands, suits, liabilities, fines, penalties and expenses.
- 39.2 SWBT will in no event be liable to CLEC for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that SWBT did not introduce to, or

knowingly use at, the affected Work Location. CLEC will indemnify, defend (at SWBT's request) and hold harmless SWBT, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from i) any Environmental Hazard that CLEC, its contractors or agents introduce to the Work Locations or ii) the presence or Release of any Environmental Hazard for which CLEC is responsible under applicable law. CLEC's obligation to indemnify will be commensurate with the degree to which CLEC or its agents caused or contributed to the loss, damages, claims, demands, suits, liabilities, fines, penalties and expenses.

40.0 Subcontracting

- 40.1 If any obligation is performed through a subcontractor, each party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either party performs through subcontractors, and each party will be solely responsible for payments due the party's subcontractors. No contract, subcontract or other Agreement entered into by either Party with any third party in connection with the provision of Resale services or Network Elements hereunder will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party. No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

41.0 Referenced Documents

- 41.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, CLEC Practice, SWBT Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, CLEC Practice, SWBT Practice, or publication of industry standards.

42.0 Severability

- 42.1 If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement will

be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each party will be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties will promptly negotiate a replacement provision or provisions. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 9.5.2.

43.0 Survival of Obligations

- 43.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

44.0 Governing Law

- 44.1 The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State of Missouri other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Jefferson City, Missouri, and waive any and all objections to a Missouri venue.

45.0 Performance Criteria

- 45.1 Specific provisions governing failure to meet Performance Criteria are contained in Attachment 17: Failure to meet Performance Criteria.

46.0 Other Obligations of CLEC

- 46.1 For the purposes of establishing service and providing efficient and consolidated billing to CLEC, CLEC is required to provide SWBT its authorized and nationally recognized Operating Company Number (OCN).

47.0 Dialing Parity; Interim Number Portability

- 47.1 SWBT will ensure that all CLEC Customers experience the same dialing parity as similarly-situated customers of SWBT services, such that, for all call types: (i) an CLEC Customer is not required to dial any greater number of digits than a similarly-situated SWBT customer; (ii) the post-dial delay (time elapsed between the last digit dialed and the first network response), call completion rate and transmission quality experienced by

an CLEC Customer is at least equal in quality to that experienced by a similarly-situated SWBT customer; and (iii) the CLEC Customer may retain its local telephone number. SWBT further agrees to provide Interim Number Portability in accordance with the requirements of the Act. Specific requirements concerning Interim Number Portability are set forth in Attachment 14: Interim Number Portability.

48.0 Branding

48.1 Specific provisions concerning the branding of services provided to CLEC by SWBT under this Agreement are contained in the following Attachments and Appendices to this Agreement: Attachment 1: Resale; Appendix OS-Resale; Appendix DA-Resale; Attachment 2: Ordering & Provisioning-Resale; Attachment 3: Maintenance-Resale; Attachment 7: Ordering & Provisioning-Unbundled Network Elements; Attachment 8: Maintenance-Unbundled Network Elements.

49.0 Customer Inquiries

49.1 Each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

49.2 Each Party will ensure that all of their representatives who receive inquiries regarding the other Party's services: (i) provide the numbers described in Section 49.1 to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party or its products or services.

50.0 Disclaimer of Warranties

50.1 TO THE EXTENT CONSISTENT WITH ITS OBLIGATIONS UNDER THE ACT, SWBT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER.

51.0 No Waiver

51.1 CLEC's agreement herein to accept less than fully operational electronic interfaces to operations support systems functions on and after January 1, 1997, will not be deemed a waiver of Section 251(c)(3) of the Act to receive such interfaces on that date.

52.0 Effect of Other Agreements

52.1 If SWBT enters into an agreement (the "Other Agreement") approved by the Missouri Public Service Commission pursuant to Section 252 of the Act, which provides for the provision of arrangements covered in this Agreement to another requesting

Telecommunications Carrier, SWBT will make available in Missouri, to CLEC such arrangements upon the same rates, terms and conditions as those provided in the Other Agreement. At its sole option, CLEC may avail itself of either (i) the Other Agreement in its entirety or (ii) the prices, terms and all material conditions or the Other Agreement that directly relate to any of the following duties as a whole:

- (1) All Interconnection Rates - Section 251(c)(2) of the Act; or Access to Unbundled Network Elements - Section 251(c)(3) of the Act;
- (2) Resale - Section 251(c)(4) of the Act; or
- (3) Collocation - Section 251(c)(6) of the Act; or
- (4) Number portability - Section 251(b)(2) of the Act of this STC; or
- (5) Access to Rights-of-Way - Section 251(b)(4) of the Act; or
- (6) Cellular Traffic;
- (7) White Pages;
- (8) Operator Services;
- (9) Directory Assistance.

53.0 Definitions

- 53.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act.

54.0 Resale

- 54.1 At the request of CLEC, and pursuant to the requirements of the Act, any telecommunications service that SWBT currently provides or hereafter offers to any customer in the geographic area where SWBT is the incumbent LEC will be made available to CLEC by SWBT for Resale in accordance with the terms, conditions and prices set forth in this Agreement. Specific provisions concerning Resale are addressed in Attachment 1: Resale, and other applicable Attachments.

55.0 Unbundled Network Elements

- 55.1 At the request of CLEC and pursuant to the requirements of the Act, SWBT will offer in the geographic area where SWBT is the incumbent LEC Network Elements to CLEC on an unbundled basis on rates, terms and conditions set forth in this Agreement that are just, reasonable, and non-discriminatory. Specific Provisions concerning Unbundled Network

Elements are addressed in Attachment 6: Unbundled Network Elements, and other applicable Attachments.

56.0 Ordering and Provisioning, Maintenance, Connectivity Billing and Recording, and Provision of Customer Usage Data

- 56.1 In connection with its Resale of services to CLEC, SWBT agrees to provide to CLEC Ordering and Provisioning Services, Maintenance Services, Connectivity Billing and Recording Services and Provision of Customer Usage Data Services pursuant to the terms specified in Attachments 2, 3, 4 and 5, respectively.
- 56.2 In connection with its furnishing Unbundled Networks Elements to CLEC, SWBT agrees to provide to CLEC Ordering and Provisioning Services, Maintenance services, Connectivity Billing and Recording services and Provision of Customer Usage Data services pursuant to the terms specified in Attachments 7, 8, 9 and 10, respectively.

57.0 Network Interconnection Architecture

- 57.1 Where the Parties interconnect their networks, for purposes of exchanging traffic between their networks, the Parties agree to utilize the interconnection methods specified in Attachment 11: Network Interconnection Architecture. SWBT expressly recognizes that this provision and said Attachment are in no way intended to impair in any way CLEC's right to interconnect with unbundled Network Elements furnished by SWBT at any technically feasible point within SWBT's network, as provided in the Act.

58.0 Compensation for Delivery of Traffic

- 58.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Attachment 12: Compensation.

59.0 Ancillary Functions

- 59.1 Ancillary Functions may include, but are not limited to, Collocation, Rights-of-Way, Conduit and Pole Attachments. SWBT agrees to provide Ancillary Functions to CLEC as set forth in Attachment 13: Ancillary Functions.

60.0 Intentionally left blank.

61.0 Intentionally left blank

62.0 Other Requirements and Attachments

- 62.1 This Agreement incorporates a number of listed Attachments which, together with their associated Appendices, Exhibits, and Addenda, constitute the entire Agreement between

the Parties. In order to facilitate use and comprehension of the Agreement, the Attachments have been grouped under the following broad headings: Resale; Unbundled Network Elements; Network Interconnection Architecture; Ancillary Functions; and Other Requirements. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability which any particular Attachment may otherwise have.

- 62.2 Appended to this Agreement and incorporated herein are the Attachments listed below. To the extent that any definitions, terms or conditions in any given Attachment differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment. In particular, if an Attachment contains a term length that differs from the term length in the main body of this Agreement, the term length of that Attachment will control the length of time that services or activities are to occur under the Attachment, but will not affect the term length of the remainder of this Agreement, except as may be necessary to interpret the Attachment.

Resale

Attachment 1: Resale

Appendix Services/Pricing

Exhibit A: SWBT's Telecommunications Services Available for Resale

Exhibit B: SWBT's Other Services Available for Resale

Appendix Customized Routing-Resale

Appendix DA-Resale

Appendix OS-Resale

Appendix White Pages (WP)-Resale

Attachment 2: Ordering and Provisioning-Resale

Attachment 3: Maintenance-Resale

Attachment 4: Connectivity Billing-Resale

Attachment 5: Provision of Customer Usage Data-Resale

Unbundled Network Elements

Attachment 6: Unbundled Network Elements (UNE)

Appendix Pricing-UNE

Appendix Pricing-UNE Schedule of Prices

Attachment 7: Ordering and Provisioning-UNE

Attachment 8: Maintenance-UNE

Attachment 9: Billing-Other

Attachment 10: Provision of Customer Usage Data-UNE

Network Interconnection Architecture and Compensation

Attachment 11: Network Interconnection Architecture

Appendix Interconnection Trunking Requirement (ITR)

Appendix Network Interconnection Methods (NIM)
Appendix SS7 Interconnection

Attachment 12: Compensation
Appendix Cellular
Appendix FGA

Ancillary Functions

Attachment 13: Ancillary Functions
Appendix Collocation
Appendix Poles, Conduit, ROW

Amended 8/99

Other Requirements

Attachment 14: Interim Number Portability
Attachment 15: E911
Attachment 16: Network Security and Law Enforcement
Attachment 17: Failure to Meet Performance Criteria
Attachment 18: Mutual Exchange of Directory Listing Information
Attachment 19: White Pages-Other (WP-O)
Attachment 20: Clearinghouse
Attachment 21: Numbering
Attachment 22: DA-Facilities Based
Attachment 23: OS-Facilities Based
Attachment 24: Recording-Facilities Based

***This Agreement, entered into pursuant to Section 252(i) of the Telecommunications Act, is based on an approved contract previously entered into by SWBT and NorthPoint Communications, Inc. There was no meeting of the minds of those original parties that Internet traffic would be subject to reciprocal compensation as Local Traffic under that contract. The FCC has repeatedly asserted its interstate jurisdiction over Internet traffic, including as recently as in its Declaratory Ruling in CC Docket 96-98, released February 26, 1999, in which the FCC expressly confirmed that Internet bound traffic is non-local interstate traffic. For this reason, SWBT does not believe this Agreement provides local reciprocal compensation for Internet traffic and fully reserves its rights on this issue, including the right to invoke the dispute resolution or other lawful procedures to challenge any contention by any other party to the contrary.

COLLOCATION AGREEMENT

BETWEEN

SOUTHWESTERN BELL TELEPHONE COMPANY

AND

DSLNET COMMUNICATIONS, LLC

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COLLOCATION AGREEMENT

THIS COLLOCATION AGREEMENT ("Agreement") is made this ____ day of _____, 1999 by and between SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri corporation ("SWBT"), and DSLnet Communications, LLC, a Delaware corporation ("Collocator").

WITNESSETH

WHEREAS, SWBT is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements," in accordance with 47 U.S.C. 251(c)(6);

WHEREAS, Collocator wishes to physically collocate certain of its equipment within an Eligible Structure (as defined herein) and connect with SWBT;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SWBT and Collocator (the "Parties") agree as follows:

1.0 DEFINITIONS

1.1 "Act" means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996.

1.2 "Adjacent Space Collocation" is physical collocation at a Collocator-provided controlled environmental vault — or similar structure to the extent technically feasible — on SWBT premises adjacent to an Eligible Structure.

1.3 "Caged Physical Collocation" is an individual enclosure (not including a top) for Collocator to install its telecommunications equipment within Collocator's dedicated collocation space.

1.4 "Cageless Physical Collocation" is a collocation arrangement that does not require the construction of a cage or similar structure or the creation of a separate entrance to the collocation space.

1.5 "Dedicated Collocation Space" means the space dedicated for the Collocator's physical collocation arrangement located within a SWBT Eligible Structure.

1.6 "Eligible Structure" means (1) a SWBT central office, serving wire center or tandem office, or (2) a building or similar structure owned or leased by SWBT that houses its network facilities, or (3) a structure that houses SWBT transmission facility.

1.7 "Shared Physical Collocation Cage" is a caged dedicated collocation space that is shared by two or more collocators within a SWBT Eligible Structure.

2.0 PURPOSE AND SCOPE OF AGREEMENT

2.1 The Parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other forum that SWBT has agreed or acquiesced that any piece of Collocator equipment or facility is "equipment necessary for interconnection or access to unbundled network elements" under 47 U.S.C. 251(c)(6).

2.2 Nothing in this agreement requires SWBT to permit collocation of equipment used solely for switching (e.g. 5ESS, DMS 100, etc.) or solely to provide enhanced services; provided, however, that SWBT may not place any limitations on ability of Collocator to use all features, functions, and capabilities of collocated equipment including switching and routing features and functions and enhanced services functionalities if such equipment is necessary for access to UNEs or for interconnection with SWBT's network. SWBT may require Collocator's employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions must undergo; provided that SWBT may not require Collocator's employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.

2.3 **Submission to State Commission** – The effectiveness of this Agreement is conditioned upon the unqualified approval of this Agreement, whether as a result of an approval process or by operation of law, under 47 U.S.C. 252(a)(1). After execution of this Agreement, the parties shall submit it to the State commission for the State in which Collocator desires physical collocation as thereby required for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved, including the supplying of witnesses and testimony if a hearing is to be held.

2.4 **Failure to Receive Approval** – In the event that this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter Collocator may request to begin negotiations again under 47 U.S.C. 251. Alternatively, the parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission.

2.5 **Preparation Prior to Regulatory Approval** – Upon the written request of Collocator, SWBT shall consider an application for collocation space submitted prior to receiving the approval required by Section 2.3 hereof. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to the consideration of an application for collocation

space. In the event that the Agreement does not become fully effective as contemplated by this Section, Collocator shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by SWBT. To the extent that SWBT has incurred preparation costs not included within any payment made by Collocator, Collocator shall pay those costs within thirty (30) days of notice by SWBT.

2.6 Price quote intervals are as follows and will run concurrent with the ten (10) day notification interval for availability of space:

Number of Applications by One Collocator	Quotation Interval
1 - 5	35 Business Days
6 - 10	40 Business Days
11 - 15	45 Business Days

Should Collocator submit six (6) or more applications within five (5) business days, the quotation interval will be increased by five (5) business days for every five (5) additional applications or fraction thereof. Any material revision to an application will be treated as a new application and will be subject to the time intervals set forth above.

Collocator may obtain a shorter interval for the return of price quotes than that set forth above by scheduling a meeting with SWBT at least twenty (20) business days prior to submission of the first application to discuss, coordinate and prioritize Collocator applications. Collocator has sixty-five (65) business days from receipt of the quotation to accept the quotation. The quotation expires after sixty-five (65) business days. After sixty-five (65) business days, a new application, application fee, and engineering design charge are required.

2.7 SWBT will complete construction of all Active Central Office Switchroom Space requests for caged, shared, and cageless collocation in 90 days from the receipt of Collocator's acceptance of the quotation.

2.8 Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, SWBT will complete construction of requests for caged, shared, or cageless collocation within 180 days from receipt of Collocator's acceptance of the quotation.

2.9 SWBT will provide Collocator reduced intervals for augments to interconnection and/or power arrangements into its existing physical collocation space. Collocator must submit to SWBT's Interexchange Carrier Service Center (ICSC) a completed application for a Subsequent Job. For the reduced build-out interval to apply, this application must include an up-front payment of the non-recurring Application Fee. In addition, the application must include an accurate front equipment view (a.k.a. rack elevation drawing) specifying bay(s) for Collocator's point of termination. Unless mutually agreed to, reduced intervals for augments to interconnection and/or power arrangements, where sufficient power infrastructure is available,

shall be provided within (60) days after acceptance of the quote. Other augments requiring additional bay spaces, SWBT bays, SWBT cable racks, cage expansions and/or power requests that exceed existing power infrastructure, within Active Central Office space will have a construction interval mutually agreed upon between Collocator and SWBT, not to exceed 90 days.

2.10 Collocator must place operational telecommunications equipment in the Dedicated Collocation Space and connect with SWBT's network within sixty (60) days after receipt of such notice; provided, however, such 60-day period shall not begin until regulatory approval is obtained. If Collocator fails to do so, this Agreement is terminated except that Collocator shall be liable in an amount equal to the unpaid balance of the charges due. For purposes of this Section, Collocator's telecommunications equipment is considered to be operational and interconnected when connected to SWBT's network for the purpose of providing service.

3.0 GENERAL OFFERINGS

3.1 Except where physical collocation is not practical for technical reasons or because of space limitations, SWBT will provide physical collocation to Collocator for the purpose of interconnecting with SWBT's network or for obtaining access to SWBT's unbundled network elements pursuant to 47 U.S.C. 251(c). Physical collocation shall be provided on a non-discriminatory basis, on a "first-come, first served" basis, and otherwise in accordance with the requirements of the Act (including 47 U.S.C. 251(c)(6), and applicable FCC rules thereunder. SWBT's physical collocation offering includes the following:

3.1.1 **Caged Physical Collocation** – Collocator may apply for Caged Physical Collocation in increments of 50 square feet. SWBT will charge Collocator for the space it uses, the time and materials required to construct the "cage," and any other charges directly attributable to that carrier — such as dedicated conduit to and/or within the cage. Each Caged Physical Collocation request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in Collocator's assigned bays and the location will be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

SWBT will allow Collocator to contract with other prospective collocators to share the caged Dedicated Collocation Space in a sublease type arrangement, provided the subleasing co-locator's equipment is also used for interconnection with SWBT's network and/or access to SWBT's unbundled network elements. In a sublease arrangement, the initial collocator(s) shall not charge a subleasing collocator more than the prorated share (based on square footage used exclusively or in common) of SWBT's monthly rates and nonrecurring charges to the initial collocator. Each collocator in a sublease arrangement may order SWBT unbundled network elements to and provision service from the dedicated collocation space regardless of which collocator was the original collocator.

3.1.2 Shared Physical Collocation Cage – A shared collocation cage is a caged collocation space shared by two or more new entrant Collocators pursuant to terms and conditions agreed to by the Collocators. Collocator may apply for Shared Physical Collocation Cage in increments of 50 square feet. In those instances where SWBT receives applications simultaneously from multiple collocators who desire construction of a cage to be shared, SWBT may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning such a cage of similar dimensions and material to a single collocating party. In addition, SWBT must prorate the charge for site conditioning and preparation undertaken by SWBT to construct the shared collocation cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to each party sharing the space based on the percentage of the total space of the shared cage utilized by the parties. The total of the collocators' combined floor space requirements must equal the total square footage of the shared cage. Collocator's allocation of the total charge for site preparation will be based on the percentage of the total space utilized by Collocator. If Collocator submits a unique request, then only Collocator will be charged for those costs directly attributable to Collocator.

If two or more requesting carriers have interconnection agreements with SWBT, SWBT will permit each requesting carrier to order unbundled network elements and provision service from shared collocation space, regardless of which requesting carrier was the original collocator. Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one collocation interconnection power panel (CIPP).

3.1.3 Cageless Physical Collocation - Subject to technical feasibility and security requirements, SWBT will allow Collocator to collocate in any unused space (space that is vacant and does not contain SWBT equipment, is not reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space) in SWBT's Eligible Structure (central office), without requiring the construction of a cage or similar enclosure around Collocator's dedicated space, and without requiring the creation of a separate entrance to Collocator's dedicated space. SWBT will designate the space to be used for cageless collocation. SWBT may require Collocator to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for Collocator's or other collocating carriers' use, and once inside the building, SWBT must permit Collocator to have direct access to Collocator's equipment.

SWBT may not require Collocator to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit to incumbents, in lieu of direct connection to SWBT's network if technically feasible. In addition, SWBT may not require Collocator to collocate in a room or isolated space separate from SWBT's own equipment that only serves to increase the cost of collocation and decrease the

amount of available collocation space. SWBT may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing SWBT equipment in its own cage, and other reasonable security measures as described herein. SWBT may utilize reasonable segregation requirements that do not impose unnecessary additional cost on Collocator.

SWBT must make cageless collocation space available in single-bay increments, meaning that Collocator can purchase space in increments small enough to collocate a single relay rack, or bay, of equipment (10 square feet for standard equipment bays and 18 square feet for cabinetized equipment bays).

Each Collocator request will be provisioned with a Collocation Interconnect Power Panel (CIPP). The panel will reside in one of Collocator's assigned bays and the location shall be determined by Collocator. The engineering, furnishing and installation of the CIPP will be the responsibility of SWBT and will be part of Collocator's cost. Any available physical collocation option will require and include a minimum of one Collocation Interconnection Power Panel (CIPP).

3.1.4 Adjacent Space Collocation – When space is legitimately exhausted inside a SWBT Eligible Structure, SWBT will permit Collocator to physically collocate in adjacent controlled environmental vaults or similar structures (e.g. used by SWBT to house telecommunications equipment) to the extent technically feasible. SWBT will permit Collocator to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, and SWBT's right to exercise reasonable control over the design, construction, and placement of such adjacent structures. Collocator will be responsible for securing the required licenses and permits, the required site preparations, and retain responsibility for building and site maintenance associated with placing the adjacent structure. SWBT will be allowed to reserve reasonable amounts of space adjacent to its premises needed to expand its premises to meet building growth requirements. SWBT reserves the right to assign the location of the designated space where the adjacent structure will be placed.

SWBT will provide a standard offering of 100 AMPS of AC power to the adjacent structure when Central Office Switchboard AC capacity exists and 200 AMPS of DC power to the adjacent structure up to 200 cable feet from the Central Office power source. When power requirements are outside of these office capacity and distance limitations, SWBT will treat the requirements as a unique request and coordinate a mutually agreeable solution for provisioning power with Collocator. At its option, Collocator may choose to provide its own AC and DC power to the adjacent structure. SWBT will provide power and physical collocation services and facilities to such adjacent structures, subject to the same nondiscrimination requirements as other collocation arrangements in this Agreement.

Any temporary adjacent structure placed by Collocator should be removed at Collocator's expense once interior space is available in the Eligible Structure. Appropriate charges applicable

for collocation within the Eligible Structure will apply. SWBT will work cooperatively with Collocator to relocate facilities into the Eligible Structure.

3.1.5 All other requests for physical collocation will be analyzed on a case-by-case basis. When Collocator requests a particular collocation arrangement, Collocator is entitled to a rebuttable presumption that such arrangement is technically feasible if any LEC with a substantially similar network has deployed such collocation arrangement in any incumbent LEC premises.

3.2 **Interconnection Arrangement** - SWBT shall provide, at the request of Collocator, the connection between Collocator's optional POT frame or equipment bay and the SWBT network. The connection cannot be provided by Collocator. Collocator will not be permitted access to the SWBT Main Distribution Frame or Intermediate Distribution Frame. If regeneration equipment is required, for any reason, it will be at Collocator's expense. Interconnection Arrangements options are as follows: DS1 Arrangement, DS3 Arrangement, Copper Cable Arrangement, Shielded Cable Arrangement, and Fiber Arrangement.

3.3 SWBT shall provide, at the request of Collocator, the connection between the equipment in the collocated spaces of two or more telecommunications carriers. Available connections include copper cable, coaxial cable, and fiber optic cable.

3.4 Within a contiguous area within the Eligible Structure, SWBT shall permit Collocator to connect its equipment with that of another collocated telecommunications carriers within the same Eligible Structure provided that the collocated equipment is also used for interconnection with SWBT or for access to SWBT's unbundled network elements. Collocator will not be permitted to place cable over SWBT's switches or other critical equipment. SWBT will designate the space to be used for such facilities. SWBT shall permit Collocator to construct such facilities using copper or optical fiber facilities subject to the same reasonable safety requirements that SWBT imposes on its own equipment and facilities.

If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the necessary construction and perform the cable pull on a time and materials basis. At no time will Collocator be allowed access to any portion of the central office other than the collocation area — except for reasonable access to restrooms and parking lots where available. SWBT will not make the physical connection with Collocator's equipment, SWBT will not accept any liability for the cable or the connections and SWBT will not maintain any records concerning these connections.

3.5 SWBT shall permit Collocator to place its own connecting transmission facilities within SWBT's Eligible Structure in the physical collocation space, subject to reasonable safety limitations. Collocator shall not have access to SWBT's Main Distribution Frame and/or Intermediate Distribution Frame. As provided herein, SWBT may require reasonable security arrangements to protect its equipment and ensure network reliability. Except as provided below, SWBT may only impose security arrangements that are as stringent as the security arrangements

that SWBT maintains at its own premises for its own employees or authorized contractors. SWBT must allow Collocator to access its installed physical collocation equipment 24 hours a day, seven days a week, in central offices without requiring either a security escort of any kind or delaying a Collocator's employees' entry into SWBT's central office. SWBT interprets these requirements to apply to central offices only, not remote terminals. Reasonable security measures that SWBT may adopt include, but are not limited to, the following:

- A. Installing security cameras or other monitoring systems; or
- B. Requiring Collocator personnel to use badges with computerized tracking systems; or
- C. Requiring Collocator employees to undergo the same level of security training, or its equivalent, that SWBT's own employees, or third party contractors providing similar functions, must undergo; provided, however, that SWBT may not require Collocator employees to receive such training from SWBT itself, but must provide information to Collocator on the specific type of training required so Collocator's employees can conduct their own training.
- D. SWBT may take reasonable steps to protect its own equipment, such as enclosing the equipment in a cage.

3.6 Relocation – In the event SWBT determines it necessary for Dedicated Collocation Space to be moved within the Eligible Structure in which the Dedicated Collocation Space is located or to another Eligible Structure, Collocator is required to do so. If such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the dedicated collocation space or eligible structure uneconomical in SWBT's sole judgment, Collocator shall be responsible for the cost of preparing the new dedicated collocation space at the new location. Otherwise SWBT shall be responsible for any such preparation costs.

In the event that Collocator requests that the Dedicated Collocation Space be moved within the SWBT Eligible Structure or to another Eligible Structure, SWBT shall permit Collocator to relocate the Dedicated Collocation Space, subject to the availability of space and associated requirements. Collocator shall be responsible for all charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Dedicated Collocation Space and the new wire center as applicable.

4.0 SPACE AVAILABILITY

4.1 At the request of Collocator, SWBT will provide space for physical collocation as described above. SWBT is not required to provide physical collocation at a particular Eligible Structure if it demonstrates that physical collocation is not practical for technical reasons or because of space limitations. In such cases and with the qualifications set forth above, SWBT

will provide Adjacent Structure Collocation as described above or Virtual Collocation, except at points where SWBT proves that Adjacent Structure Collocation and/or Virtual Collocation is not technically feasible. If Adjacent Structure Collocation or Virtual Collocation is not technically feasible, SWBT will make a good faith effort to provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

4.2 The determination whether there is sufficient space to accommodate physical collocation at a particular Eligible Structure will be made initially by SWBT. SWBT will notify Collocator within ten (10) days of submission of a completed Application for physical collocation by Collocator as to whether its request for space is been granted or denied due to a lack of space. When space for physical collocation in a particular eligible structure is not available, SWBT shall place Collocator on the waiting list for collocation in a particular Eligible Structure according to the date Collocator submitted its application for physical collocation in that Eligible Structure.

4.3 If SWBT contends space for physical collocation is not available in premises, SWBT must also allow Collocator to tour the entire central office or other eligible structure in question, not just the area in which space was denied, without charge, within ten days of the receipt of SWBT's denial of space. If Collocator disputes SWBT's determination, Collocator can elect a review to be made by a mutually agreed to third party engineer, under a non-disclosure agreement. All costs of the third-party inspection, including but not limited to all payments to the third-party engineer in connection with the inspection, shall be shared equally by SWBT and Collocator. The engineer shall take into consideration SWBT's planned use for the eligible structure under review.

4.4 Within ten (10) days of Collocator submitting a request to SWBT for physical collocation, if SWBT finds that it must deny the request, SWBT must file its response, under seal, with the Commission. The response includes the following information:

- A. Central Office Common Language Identifier, where applicable;
- B. The identity of the requesting Collocator, including amount of space sought by Collocator;
- C. Total amount of space at the premises;
- D. Floor plans including measurements of the SWBT's premises, showing:
 - 1. Space housing SWBT network equipment or administrative offices;
 - 2. Space housing unused obsolete equipment, if any;
 - 3. Space which does not currently house SWBT equipment or administrative offices but is reserved by SWBT for future use;

4. Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements;
 5. Space, if any, occupied by third parties for other purposes;
 6. Remaining space, if any.
- E. Identification of turnaround space for the switch or other equipment, if any;
- F. Central office rearrangement/expansion plans, if any and
- G. Description of other plans, if any, that may relieve space exhaustion.

4.5 SWBT will maintain a publicly available document, posted for viewing on SWBT's publicly available Internet site, indicating all premises that are full, and will update such a document within ten days of the date at which a premises runs out of physical collocation space.

4.6 Upon request, SWBT must submit to the requesting carrier within ten days of the submission of the request a report indicating the available collocation space in a particular SWBT premises. Collocator may request a report by submitting a completed Collocation Space Availability Report Request with the required fees for the requested report(s). This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that SWBT is taking to make additional space available for collocation. For more than 20 requests at once from Collocator regarding offices where there is no current collocation or collocation forecasted, SWBT will provide the additional information on a scheduled basis of ten additional offices every ten days.

4.7 In any Central Office in which all options for physical collocation offered by SWBT have been exhausted, SWBT shall not be permitted to provide additional space in that Central Office for any of its affiliates.

4.8 SWBT is not required to lease or construct additional space to provide for physical collocation when existing space has been exhausted. Moreover, SWBT is not required to, nor shall this Appendix create any obligation or expectation, to relinquish used, or forecasted space to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy any request for additional space or the placement of Collocator equipment or facilities, whether through an initial request for physical collocation or a subsequent request for more space in an Eligible Structure. SWBT and Collocator shall not unreasonably warehouse forecasted space.

4.9 To the extent possible, SWBT will make contiguous space available to Collocator if Collocator seeks to expand an existing physical collocation arrangement and such request meets SWBT's non-discriminatory practices regarding efficient space utilization.

4.10 When planning renovations of existing Eligible Structures or constructing or leasing new Eligible Structures, SWBT will take into account future demand based upon its knowledge of Collocator demand for Collocation.

4.11 SWBT may retain a limited amount of floor space for SWBT's own specific future uses for a time period on terms no more favorable to SWBT for like equipment than those that apply to other telecommunications carriers, including Collocator, seeking to reserve Collocation space for their own future use. Except for space needed for switching equipment "turnaround" (e.g., the installation of new switching equipment to replace then-existing switching equipment), if any, and/or otherwise permitted or directed by applicable rule or order, SWBT will relinquish any space held for future use before denying a request for Virtual Collocation on grounds of space limitations, unless SWBT proves to the Commission that Virtual Collocation at that point is not technically feasible, including that space does not exist. In any such event, SWBT and Collocator will attempt to reach a mutually agreeable alternative method of interconnection.

4.12 SWBT shall, upon space exhaustion and reasonable request by Collocator, remove obsolete unused equipment from their premises if necessary to make space available for collocation.

4.13 SWBT may impose reasonable restrictions on its provision of additional unused space available for Collocation (so-called "warehousing") as described in paragraph 586 of the First Interconnection Order; provided, however, that SWBT shall not set a maximum space limitation on Collocator unless SWBT proves to the Commission that space constraints make such restrictions necessary.

5.0 DENIAL OF COLLOCATION EQUIPMENT

5.1 SWBT shall permit the collocation of any type of equipment necessary ("used or useful") for interconnection or access to unbundled network elements. SWBT may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that SWBT applies to its own equipment. SWBT may not object to the collocation of equipment on the ground that the equipment fails to comply with any requirement contained in TP 76200MP other than those included in Level One standards. If SWBT denies collocation of Collocator equipment, citing non-compliance to one or more TP 76200MP Level One requirements, SWBT must provide to the Collocator within five business days of the denial a list of all network equipment that SWBT has placed within the network area(s) of the premises in question since January 1, 1998, together with an affidavit attesting that all of that equipment meets or exceeds TP 76200MP Level One requirements.

5.2 SWBT is not required to permit collocation of equipment that is not necessary for either access to UNEs or for interconnection with SWBT, nor such as equipment used exclusively for switching or for enhanced services. Nothing in this Agreement requires SWBT to permit collocation of equipment used solely for switching or solely to provide enhanced services;

provided, however, that SWBT may not place any limitations on the ability of Collocator to use all the features, functions, and capabilities of equipment collocated, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

6.0 DEDICATED COLLOCATION SPACE CHARGES

6.1 For each Eligible Structure in which Collocator desires to physically collocate equipment, Collocator must submit a Physical Collocation Application with the applicable Engineering Design Charge and/or application fee. A copy of the Physical Collocation Application may be obtained from your Collocation Services account manager. The Physical Collocation Application must also be used for each subsequent request to place equipment in an Eligible Structure.

6.2 SWBT will contract for and perform the construction and preparation activities underlying the Preparation Charge, including, any Custom Work charges, using same or consistent practices that are used by SWBT for other construction and preparation work performed in the Eligible Structure. Applicable recurring charges will be included in the price quote.

6.3 **Recurring charges.** Collocator shall pay to SWBT a per month for use of the Dedicated Collocation Space. The recurring monthly charges for each Dedicated Collocation Space shall stay fixed for the term of this agreement and may be modified upon renegotiation of the Interconnection Agreement

6.4 Collocator shall pay its proportionate share of any reasonable security arrangements SWBT employs to protect SWBT's equipment and ensure network reliability as outlined in section 3.5.

6.5 **Payment of Preparation Charge.** Prior to any obligation on SWBT to start any preparation of the Dedicated collocation space, Collocator shall pay SWBT fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of any custom work charge required to create or vacate any entrance facility for the Collocator ("Custom Work"). Collocator also has the option of submitting a surety bond to cover these charges, in lieu of a check. The remainder of the Preparation Charge and any Custom Work charge are due upon completion and prior to occupancy by the Collocator.

6.6 **Occupancy Conditioned on Payment.** SWBT shall not permit Collocator to have access to the dedicated collocation space for any purpose other than inspection during construction of Collocator's dedicated physical collocation space until SWBT is in receipt of complete payment of the Preparation Charge and any Custom Work charges.

6.7 **Breach Prior to Commencement Date.** In the event that the Collocator materially breaches this Agreement by purporting to terminate this Agreement after SWBT has begun preparation of the dedicated collocation space but before SWBT has been paid the entire amounts

due under this Article, then in addition to any other remedies that SWBT might have, the Collocator shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.

6.8 Late Payment Charge. In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in SWBT's intrastate tariff late payment provision(s) applicable to access services for the State in which the dedicated collocation space is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.

6.9 Charges will begin to accrue on the Effective Billing Date. The Effective Billing Date is the date SWBT made the Dedicated Collocation Space available to Collocator.

6.10 Billing. Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SWBT may change its billing date practices upon thirty (30) days notice to the Collocator.

6.11 Charges for interconnection shall be as set forth in any interconnection agreement between SWBT and Collocator and any applicable tariffs.

7.0 USE OF DEDICATED COLLOCATION SPACE

7.1 Nature of Use – The dedicated collocation space is to be used by Collocator for purposes of collocating equipment and facilities within SWBT's Eligible Structure for interconnection with SWBT's network, pursuant to 47 U.S.C. 251(c)(2), and for obtaining access to SWBT's unbundled network elements, pursuant to 47 U.S.C. 251 (c)(3). Consistent with the nature of the Eligible Structure and the environment of the dedicated collocation space, Collocator shall not use the dedicated collocation space for office, retail, or sales purposes. No signage or markings of any kind by Collocator shall be permitted on the eligible structure or on the grounds surrounding the Building.

7.2 Collocator shall not have access to SWBT's Main Distribution Frame or Intermediate Distribution Frame, DSXs, DCS, or any other SWBT equipment or facilities not specifically designated by SWBT for Collocator access.

7.3 Fiber Entrances – Collocator shall use a single mode dielectric fiber optic cable as a transmission medium to the dedicated collocation space. Collocator shall be permitted no more than two (2) entrance routes into the Building, if available.

7.4 Demarcation Point – SWBT shall designate the point(s) of termination within the eligible structure as the point(s) of physical demarcation between Collocator's network and

SWBT's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point.

7.5 Administrative Uses – Collocator may use the dedicated collocation space for placement of equipment and facilities only. Collocator's employees, agents and contractors shall be permitted access to the dedicated collocation space at all reasonable times, provided that Collocator's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. The Collocator agrees to comply promptly with all laws, ordinances and regulations affecting the use of the dedicated collocation space. Upon the expiration of the Agreement, Collocator shall surrender the dedicated collocation space to SWBT, in the same condition as when first occupied by Collocator, ordinary wear and tear excepted.

7.6 Threat to Network or Facilities – Regarding safety and network security, Collocator equipment or operating practices representing a significant demonstrable technical threat to SWBT's personnel, network or facilities, including the Eligible Structure, or those of others are strictly prohibited.

7.7 Interference or Impairment – Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the dedicated collocation space shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Building; create hazards for or cause damage to those facilities, the dedicated collocation space, or the Building; impair the privacy of any communications carried in, from, or through the Building; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach of this Agreement.

7.8 Personalty and its Removal – Subject to this Article, Collocator may place or install in or on the dedicated collocation space such fixtures and equipment as it shall deem necessary for the conduct of business. Personal property, fixtures and equipment placed by Collocator in the dedicated collocation space shall not become a part of the dedicated collocation space, even if nailed, screwed or otherwise fastened to the dedicated collocation space, but shall retain their status as personalty and may be removed by Collocator at any time. Any damage caused to the dedicated collocation space by the removal of such property shall be promptly repaired by Collocator at its expense.

7.9 Alterations – In no case shall Collocator or any person purporting to be acting through or on behalf of Collocator make any rearrangement, modification, improvement, addition, repair, or other alteration to the dedicated collocation space or the Eligible Structure without the advance written permission and direction of SWBT. SWBT shall consider a modification, improvement, addition, repair, or other alteration requested by Collocator, provided that SWBT shall have the right to reject or modify any such request. The cost of any such construction shall be paid by Collocator in accordance with SWBT's then-standard custom work order process.

7.10 Minimum Standards – This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with the SBC Technical Publication 76200MP Level 1 requirements (ii) SWBT's Interconnector's Collocation Service Handbook for Physical Collocation dated June 1, 1999, as may be amended from time to time; (iii) SBC Technical Publication 76300MP, Installation Guide, followed in installing network equipment and facilities within SWBT central offices, as may be amended from time to time; (iv) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (v) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. Collocator shall strictly observe and abide by each.

7.11 Revisions – Any revision to SWBT's Interconnector's Collocation Service Handbook, its Technical Publication 76300MP, any other Technical Publication specified within the Interconnector's Collocation Services Handbook, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Agreement thirty (30) days after such revision is released by SWBT; provided, however, that any revision made to address situations potentially harmful to SWBT's network or the dedicated collocation space or to comply with statutory and/or regulatory requirements shall become effective immediately.

7.12 Compliance Certification – Collocator warrants and represents that all equipment or facilities placed in an Eligible Structure shall be in compliance with SBC TP76200MP Level 1 requirements.

7.13 Power – Unless otherwise expressly agreed in writing, SWBT will provide for all AC and DC power requirements in the eligible structure. Collocator is not permitted to, and will not, place any AC or DC power-generating or power-storing devices (including, for example, rectifiers, battery plants, AC or DC generators) in the Eligible Structure. Power will support Collocator Telecom Equipment at the specified DC and AC voltages. At a minimum, the Power and SWBT's associated performance, availability, restoration, and other operational characteristics shall be at parity with that provided to SWBT's substantially similar telecommunications equipment unless otherwise mutually agreed in writing. All necessary Power will be supplied on a timely basis. A physical collocation space will be considered timely delivered only if it is fully operational, including power, at the time it is turned over to Collocator. The use of at least one Collocation Interconnect Power Panel (CIPP) will be required with each application. This panel will provide a location for DC power terminations in all physical collocation arrangements. This panel will reside within one of Collocator's equipment bays within their designated space.

8.0 RESPONSIBILITIES OF COLLOCATOR

8.1 Contact Number – Collocator is responsible for providing to SWBT personnel a contact number for Collocator's technical personnel who are readily accessible 24 hours a day, 7 days a week.

8.2 Trouble Status Reports – Collocator is responsible for providing trouble report status when requested by SWBT.

8.3 Optical Fiber Extension – Collocator is responsible for bringing its fiber optic cable to the wire center entrance manhole(s) designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the Collocator-provided cable through the cable vault to the dedicated collocation space.

8.4 Regeneration – Regeneration of either DS1 or DS3 signal levels may be provided by Collocator, or SWBT under its then-standard custom work order process, including payment requirements prior to the installation of the regeneration equipment.

8.5 Removal – Collocator is responsible for removing any equipment, property or other items that it brings into the dedicated collocation space or any other part of the Building. If Collocator fails to remove any equipment, property, or other items from the dedicated collocation space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge Collocator for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, Collocator shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

8.6 Collocator's Equipment and Facilities – Collocator is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities placed by Collocator in the dedicated collocation space. Collocator will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the dedicated collocation space:

- A. Its fiber optic cable(s);
- B. Its equipment;
- C. Optional point of termination cross connects in its dedicated collocation space or the optional POT Frame/cabinet located in the collocation common area except if on SWBT's equipment.
- D. Collocator requested dedicated point of termination frame maintenance, including replacement of fuses and circuit breaker restoration, to the extent that such fuses and circuit breakers are within Collocator's dedicated collocation space or in the optional POT frame located in the collocation common area if and as required; and

- E. The connection cable and associated equipment which may be required within Collocator's dedicated collocation space or in the optional POT frame/cabinet located in the collocation common area to the point(s) of termination of that cable within Collocator's dedicated space.
- F. Any power cables required beyond the SWBT provided Collocation Interconnection Power Panel (CIPP) to Collocator's equipment. SWBT must always engineer, furnish and install the Collocation Interconnect Power Panel (CIPP) within Collocator-provided equipment bay, the associated power cables to the CIPP from the SWBT provided power distribution source and terminate and test the power cables. The CIPP will be placed within Collocator-provided equipment bay in a location within the bay as designated by Collocator.

SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.

8.7 Verbal Notifications Required – Collocator is responsible for immediate verbal notification to SWBT of significant outages or operations problems which could impact or degrade SWBT's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.

8.8 Service Coordination – Collocator is responsible for coordinating with SWBT to ensure that services are installed in accordance with the service request.

8.9 Testing – Collocator is responsible for testing, to identify and clear a trouble when the trouble has been isolated to a Collocator-provided facility or piece of equipment. If SWBT testing is also required, it will be provided at charges specified in SWBT's F.C.C. No. 73, Section 13.

9.0 VIRTUAL COLLOCATION

9.1 The description of Virtual Collocation Interconnection is contained in SWBT's Virtual Collocation tariffs (i.e., SWBT's Tariff F.C.C. No. 73).

10.0 CASUALTY LOSS

10.1 Damage to dedicated collocation space - If the dedicated collocation space are damaged by fire or other casualty, and

- A. The dedicated collocation space are not rendered untenable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
- B. The dedicated collocation space are rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) days, SWBT has

the option to repair the dedicated collocation space at its expense (as hereafter limited) and rent shall be proportionately abated while Collocator was deprived of the use. If the dedicated collocation space cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to Collocator within thirty (30) days following such occurrence) terminate as of the date of such damage.

Any obligation on the part of SWBT to repair the dedicated collocation space shall be limited to repairing, restoring and rebuilding the dedicated collocation space as originally prepared for Collocator and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by Collocator or by SWBT on request of Collocator; or any fixture or other equipment installed in the dedicated collocation space by Collocator or by SWBT on request of Collocator.

10.2 Damage to Building – In the event that the eligible structure shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in SWBT's opinion, be advisable, then, notwithstanding that the dedicated collocation space may be unaffected thereby, SWBT, at its option, may terminate this Agreement by giving Collocator ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

11.0 RE-ENTRY

11.1 If Collocator shall default in performance of any agreement herein, and the default shall continue for thirty (30) days after receipt of written notice, or if Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess the dedicated collocation space, expel Collocator and any claiming under Collocator, remove Collocator's property, forcibly if necessary, and thereupon this Agreement shall terminate, without prejudice to any other remedies SWBT might have. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by Collocator at any time thereafter.

12.0 LIMITATION OF LIABILITY

12.1 Limitation – With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of SWBT, if any, shall not exceed an amount equivalent to the proportionate monthly charge to Collocator for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of Collocator or which arise in connection with the use of Collocator-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon SWBT.

12.1.1 Neither party shall be responsible to the other for any indirect, special, consequential, lost profit, or punitive damages, whether in contract or tort.

12.1.2 Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.

12.1.3 Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or billing disputes.

12.1.4 The liability of either party for its willful misconduct, if any, is not limited by this Agreement. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, SWBT's liability, if any, shall not exceed an amount equal to the proportionate monthly charge for the affected period.

12.1.5 SWBT shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall SWBT for its own act or omission hold liable any other carrier or customer providing a portion of a service.

12.1.6 When Collocator is provided service under this Agreement, SWBT shall be indemnified, defended and held harmless by Collocator against any claim, loss or damage arising from the customer's use of services offered under this Agreement, involving:

- A. Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the customer's own communications;
- B. Claims for patent infringement arising from the customer's acts combining or using the service furnished by SWBT in connection with facilities or equipment furnished by the customer; or
- C. All other claims arising in connection with any act or omission of in the course of using services provided pursuant to this Agreement.

12.2 **Third Parties** – Collocator acknowledges and understands that SWBT may provide space in or access to the eligible structure to other persons or entities ("Others"), which may include competitors of Collocator; that such space may be close to the dedicated collocation space, possibly including space adjacent to the dedicated collocation space and/or with access to the outside of the dedicated collocation space; and that if Collocator requests a cage around its equipment, the cage dedicated collocation space is a permeable boundary that will not prevent the Others from observing or even damaging Collocator's equipment and facilities. In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any

action or omission by any other, regardless of the degree of culpability of any such other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. Collocator shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of Collocator.

13.0 INDEMNIFICATION OF SWBT

13.1 In addition to any other provision hereof, Collocator agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with Collocator's use of the dedicated collocation space, conduct of its business or any activity, in or about the dedicated collocation space, performance of any terms of this Agreement, or any act or omission of Collocator (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to SWBT.

14.0 LIMITATION OF ACTIONS; DISPUTE RESOLUTION

14.1 **Finality of Disputes** – No claim arising from this Agreement shall be brought more than twenty-four (24) months from the date of occurrence which gives rise to the claim.

14.2 **Alternative to Litigation** – *The parties desire to resolve disputes arising in connection with this Agreement without litigation.* Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising from or relating to this Agreement.

14.3 **Resolution of Disputes Between Parties** – At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may use other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement, exempt from discovery and production, shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

14.4 **Arbitration** – If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party

may demand such arbitration in accordance with the procedures set forth in those rules. Discovery shall be controlled by the arbitrator and shall be permitted only to the extent set forth in this Section. Each party may submit in writing to the other party, and the receiving party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- A. Interrogatories
- B. Demands to produce documents
- C. Requests for admission

Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in St. Louis, Missouri. The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

14.5 Costs – Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (including search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrator.

15.0 NOTICES

15.1 Except as may be specifically permitted in this Agreement, any notice, demand, or payment required or desired to be given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

If to SWBT: Account Manager - Collocation
Four Bell Plaza, 9th Floor
311 S. Akard St.
Dallas, TX 75202-5398

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If to Collocator: Wendy Bluemling, Director
DSLnet Communications, LLC
545 Long Wharf Drive, 5th Floor
New Haven, CT 06511

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

16.0 COMPLIANCE WITH LAWS

16.1 Collocator and all persons acting through or on behalf of Collocator shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder. Collocator further agrees during the term of this Agreement to comply with all applicable Executive and Federal regulations as set forth in SW9368, attached as Exhibit ____ and incorporated herein, as may be modified from time to time.

17.0 OSHA STATEMENT

17.1 Collocator, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to the dedicated collocation space which Collocator has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result of Collocator's failure to comply with any of the foregoing. SWBT, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the dedicated collocation space which SWBT has agreed to maintain pursuant hereto.

18.0 INSURANCE

18.1 Coverage Requirements – Collocator shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the jurisdiction in which the dedicated collocation space are located. SWBT shall be named as an ADDITIONAL INSURED on general liability policy.

- A. Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

- B. If use of an automobile is required or if Collocator is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. Collocator hereby waives any rights of recovery against SWBT for damage to Collocator's vehicles while on the grounds of the eligible structure and Collocator will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of Collocator's employees, contractors, invitees, licensees or agents.
- C. Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- D. Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- E. Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- F. All Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the eligible structure or the dedicated collocation space. Collocator releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the instance of Collocator by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of Collocator against SWBT for damage to Collocator's fixtures or personal property are hereby waived.

Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that SWBT has no liability for loss of profit or revenues should an interruption of service occur.

18.2 Coverage Increases – The limits set forth in Section 18.1 may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT buildings.

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18.3 Primary Coverage – All policies purchased by Collocator shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.

18.4 Effective Date – All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator's facilities or equipment remains within the dedicated collocation space or the Building. If Collocator fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by Collocator.

18.5 Supporting Documentation – Collocator shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Agreement. Collocator shall arrange for SWBT to receive thirty (30) days advance written notice from Collocator's insurance company (ies) of cancellation, non-renewal or substantial alteration of its terms.

18.6 Carrier Recommendations – Collocator must also conform to the recommendation(s) made by SWBT's Property Insurance Company which Collocator has already agreed to or to such recommendations as it shall hereafter agree to.

18.7 Material Breach – Failure to comply with the provisions of this section will be deemed a material violation of this Agreement.

19.0 SWBT's RIGHT OF ACCESS

19.1 SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter the collocation area of the SWBT dedicated collocation space at any reasonable time to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the collocation area dedicated collocation space for purpose of averting any threat of harm imposed by Collocator or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the dedicated collocation space. If routine inspections are required, they shall be conducted at a mutually agreeable time.

20.0 MISCELLANEOUS

20.1 Exhibits – The following Exhibits are attached hereto and made part hereof:

Exhibit _____

Exhibit _____

Exhibit _____

Exhibit _____

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20.2 Variations – In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by SWBT shall control.

20.3 Governing Law – This Agreement shall be governed by the laws of the State in which the dedicated collocation space is located, without regard to the choice of law principles thereof.

20.4 Joint and Several – If Collocator constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.

20.5 Future Negotiations – SWBT may refuse requests for space in an Eligible structure if Collocator is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, Collocator hereby releases and holds SWBT harmless from any duty to negotiate with Collocator or any of its affiliates for any additional space or physical collocation.

20.6 Severability – With the exception of the requirements, obligations, and rights set forth in this Appendix, if any of the provisions herein are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of SWBT and Collocator shall be construed accordingly.

20.7 Paragraph Headings and Article Numbers – The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

20.8 Entire Agreement – This Agreement with the attached schedules and exhibits, and referenced documentation and materials attached hereto set forth the entire understanding of the parties and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties; provided, however, that this provision shall not affect current or pending tariffs, under investigation or otherwise, including any charges due thereunder. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.

20.9 No Third Party Beneficiaries – Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

20.10 Construction – This Agreement shall be interpreted and governed without regard to which party drafted this Agreement.

20.11 Multiple Originals – This Agreement may be executed in multiple copies, each of which shall be deemed an original.

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20.12 **Wavier of Obligations**

- A. Whenever this Agreement requires the consent of a party, any request for such consent shall be in writing.
- B. Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Agreement prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other collocators.

20.13 Rights of Review with Remedies – The parties acknowledge and agree that the rates, terms, and conditions set forth in this Amendment, including among others those above relating to cageless collocation, are subject to any legal or equitable rights of review and remedies (including, but not limited to, the need to renegotiate this Amendment if any agency reconsideration and/or court review results in changes in FCC 99-48).

20.14 Rights Cumulative – The rights of a party hereunder are cumulative and no exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.

20.15 Binding Effect – This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest. All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

20.16 Impossibility of Performance – Neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof or court of competent jurisdiction; (b) acts of God; (c) acts of omissions of the other party; (d) fires, strikes, labor difficulties, embargoes, war, insurrection or riot; or any other intervening act beyond the reasonable control of the party claiming such a delay. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. In any such event, Collocator's authorized agents and contractors will comply with the Emergency Operating Procedures established by SWBT.

20.17 Survival – The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

20.18 Successors Bound – Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of SWBT, Collocator and their respective successors and, except as otherwise provided herein, assigns.

20.19 Conflict of Interest – Collocator represents that no employee or agent of SWBT has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from Collocator, or any of Collocator's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

20.20 Non-Exclusive Remedies – No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

20.21 Assignment – Collocator shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the dedicated collocation space by any other person or entity, without the prior written consent of SWBT which shall not be unreasonable withheld. Any purported assignment or transfer made without such consent shall be voidable at the option of SWBT including subleased or shared caged physical collocation arrangements.

21.0 APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

21.1 This appendix, and every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement or any other appendices or attachments to this Agreement which are legitimately related to such interconnection, service or network element; and all such rates, terms and conditions are incorporated by reference herein and as part of every interconnection, service and network element provided hereunder. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation and construction, notice of changes, general responsibilities of the Parties, effective date, term, termination, disclaimer of representations and warranties, changes in end user local exchange service provider selection, severability, intellectual property, indemnification, limitation of liability, Force Majeure, confidentiality, audits, disputed amounts, dispute resolution, intervening law and miscellaneous.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.

SOUTHWESTERN BELL TELEPHONE COMPANY

By: _____

Title: _____

Interconnector: Collocator
DSLNET COMMUNICATIONS, LLC

By: _____

Title: _____

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